

EXHIBIT 8
[FILED UNDER SEAL]

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
THE STATE OF TEXAS, ET §
AL., §
§ CIVIL ACTION NO.
PLAINTIFFS, § 4:20-CV-00957-SDJ
§
V. §
§
GOOGLE LLC, §
§
DEFENDANT. §

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ORAL AND VIDEOTAPED DEPOSITION OF
JEFFREY SCOTT ANDRIEN
NOVEMBER 1, 2024

ORAL AND VIDEOTAPED DEPOSITION OF JEFFREY SCOTT
ANDRIEN, produced as a witness at the instance of
the Defendant and duly sworn, was taken in the above
styled and numbered cause on Friday, November 1,
2024, from 9:04 a.m. to 6:20 p.m., before TAMARA
CHAPMAN, CSR, RPR-CRR in and for the State of Texas,
reported by computerized stenotype machine, at the
offices of Norton Rose Fulbright US LLP, 98 San
Jacinto Boulevard, Austin, Texas, pursuant to the
Federal Rules of Civil Procedure and any provisions
stated on the record herein.

Job No. CS 6918698

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<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 Marc B. Collier</p> <p>5 Nathan Damweber</p> <p>6 Ethan Glenn (via Zoom)</p> <p>7 NORTON ROSE FULBRIGHT US LLP</p> <p>8 98 San Jacinto Boulevard, Suite 1100</p> <p>9 Austin, Texas 78701</p> <p>10 512-474-5201</p> <p>11 marc.collier@nortonrosefulbright.com</p> <p>12 nathan.damweber@nortonrosefulbright.com</p> <p>13 ethan.glenn@nortonrosefulbright.com</p> <p>14 Nathan Baum (via Zoom)</p> <p>15 NORTON ROSE FULBRIGHT US LLP</p> <p>16 2200 Ross Avenue, Suite 3600</p> <p>17 Dallas, Texas 75201</p> <p>18 214-855-7487</p> <p>19 nathan.baum@nortonrosefulbright.com</p> <p>20</p> <p>21 Jonathan Wilkerson</p> <p>22 Ryan Ellis (via Zoom)</p> <p>23 Zeke DeRose (via Zoom)</p> <p>24 Alex Abston (via Zoom)</p> <p>25 THE LANIER LAW FIRM</p> <p> 10940 W. Sam Houston Parkway N, Suite 100</p> <p> Houston, Texas 77064</p> <p> 713-659-5200</p> <p> jonathan.wilkerson@lanierlawfirm.com</p> <p> ryan.ellis@lanierlawfirm.com</p> <p> zeke.deroserose@lanierlawfirm.com</p> <p> alex.abston@lanierlawfirm.com</p> <p> Luke Woodward (via Zoom)</p> <p> Brian Kelleher Richter (via Zoom)</p> <p> OFFICE OF THE TEXAS ATTORNEY GENERAL</p> <p> 300 W. 15th Street</p> <p> Austin, Texas 78701</p> <p> 512-463-2100</p> <p> luke.woodward@oag.texas.gov</p> <p> brian.richter@oag.texas.gov</p>	<p style="text-align: right;">Page 4</p> <p>1 I N D E X</p> <p>2</p> <p>3 PAGE</p> <p>4 APPEARANCES..... 2</p> <p>5 JEFFREY SCOTT ANDRIEN</p> <p>6 EXAMINATION</p> <p>7 BY MR. GIBBS..... 6</p> <p>8 BY MR. COLLIER..... 315</p> <p>9 CORRECTION PAGE..... 318</p> <p>10 SIGNATURE PAGE..... 319</p> <p>11 REPORTER'S CERTIFICATION..... 320</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 NO. DESCRIPTION PAGE</p> <p>15 Exhibit 1 Expert Report of Jeffrey S.</p> <p>16 Andrien, June 7, 2024</p> <p>17 (No Bates - 128 pages) 7</p> <p>18 Exhibit 2 Expert Rebuttal Report of</p> <p>19 Jeffrey S. Andrien</p> <p>20 September 9, 2024</p> <p>21 (No Bates - 143 pages) 8</p> <p>22 Exhibit 3 Curriculum Vitae of Jeffrey</p> <p>23 Scott Andrien</p> <p>24 (No Bates - 22 pages) 51</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE DEFENDANT:</p> <p>4 Robin C. Gibbs</p> <p>5 Charles M. Rosson</p> <p>6 GIBBS & BRUNS LLP</p> <p>7 1100 Louisiana, Suite 5300</p> <p>8 Houston, Texas 77002</p> <p>9 713-650-8805</p> <p>10 rgibbs@gibbsbruns.com</p> <p>11 crosson@gibbsbruns.com</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14 Peter Zierlein, Videographer</p> <p>15 Jonathan Jaffe, Its-Your-Internet</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: Here begins the</p> <p>2 deposition of Jeffrey Andrien. Today's date is</p> <p>3 November 1st, 2024, and the time is 9:04 a.m.</p> <p>4 Will counsel please identify</p> <p>5 themselves for the record, after which the court</p> <p>6 reporter will swear in the witness.</p> <p>7 MR. COLLIER: This is Marc Collier</p> <p>8 with Norton Rose Fulbright. Here in the conference</p> <p>9 room with me is Nathan Damweber of our firm and</p> <p>10 Jonathan Wilkerson of the Lanier Law Firm.</p> <p>11 MR. GIBBS: Robin Gibbs, Gibbs &</p> <p>12 Bruns. I'm here with Charles Rosson. We're</p> <p>13 representing the defendant Google, and we're ready</p> <p>14 to go.</p> <p>15 THE VIDEOGRAPHER: Would the folks on</p> <p>16 Zoom like to identify themselves.</p> <p>17 MR. GLENN: Ethan Glenn with Norton</p> <p>18 Rose Fulbright for the states.</p> <p>19 MR. ELLIS: Ryan Ellis, Lanier Law</p> <p>20 Firm, for the states.</p> <p>21 MR. BAUM: Nathan Baum from Norton</p> <p>22 Rose Fulbright for the states.</p> <p>23 MR. RICHTER: Brian Richter, Texas</p> <p>24 Attorney General.</p> <p>25 MR. JAFFE: Jonathan Jaffe, also</p>

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<p style="text-align: right;">Page 6</p> <p>1 present for plaintiffs.</p> <p>2 MR. WOODWARD: Luke Woodward with the</p> <p>3 Texas Attorney General.</p> <p>4 JEFFREY SCOTT ANDRIEN,</p> <p>5 having been first duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. GIBBS:</p> <p>8 Q. Would you state your full name for the</p> <p>9 record, please, sir.</p> <p>10 A. Jeffrey Scott Andrien.</p> <p>11 Q. Mr. Andrien, my name is Robin Gibbs. I'm</p> <p>12 with the firm of Gibbs & Bruns in Houston, and we</p> <p>13 represent the defendant, Google, in this case.</p> <p>14 Do you understand that?</p> <p>15 A. I do.</p> <p>16 Q. You are here to take your deposition</p> <p>17 today. And I know you've given depositions on many</p> <p>18 occasions previously. Would that be true?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand, therefore, the</p> <p>21 purpose of the deposition. Fair?</p> <p>22 A. I do. That's fair.</p> <p>23 Q. Can we agree that if there are any of my</p> <p>24 questions that are unclear to you for any reason,</p> <p>25 that you will ask me to clarify the question before</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Yes, I have.</p> <p>2 Q. Have you noted any errors in your report</p> <p>3 or do you want to make any changes in that original</p> <p>4 report as you sit here?</p> <p>5 A. As I sit here, I don't -- I don't recall</p> <p>6 any changes that I would like to make, as I sit</p> <p>7 here.</p> <p>8 Q. All right. Do you intend to stand by</p> <p>9 your report and the conclusions in that report in</p> <p>10 this case?</p> <p>11 A. I do. I do think I found a typo</p> <p>12 somewhere, as I was looking through it.</p> <p>13 Q. All right. But nonsubstantive, I take</p> <p>14 it.</p> <p>15 (Discussion off the written record.)</p> <p>16 (Exhibit 2 was marked.)</p> <p>17 Q. Mr. Andrien, I want to hand you Andrien</p> <p>18 Exhibit 2 to your deposition and ask you if you can</p> <p>19 identify that as your rebuttal report in this</p> <p>20 matter?</p> <p>21 A. (Pause.)</p> <p>22 This does appear to be my rebuttal</p> <p>23 report.</p> <p>24 Q. And did you likewise have a chance to</p> <p>25 review that report before you came to testify?</p>
<p style="text-align: right;">Page 7</p> <p>1 you give your answer?</p> <p>2 A. Yes.</p> <p>3 Q. We can have that agreement. And we take</p> <p>4 that agreement because we want to ensure that if you</p> <p>5 give an answer, you will have understood the</p> <p>6 question. Fair enough?</p> <p>7 A. Fair enough.</p> <p>8 Q. All right. You have been retained here</p> <p>9 as an expert, as I understand it, in connection with</p> <p>10 the calculation of civil penalties in this lawsuit</p> <p>11 on behalf of the states, the plaintiffs. True?</p> <p>12 A. That is true.</p> <p>13 (Exhibit 1 was marked.)</p> <p>14 MR. GIBBS: Okay. I'm going to have</p> <p>15 you mark -- and/or recognize Exhibit No. 1 to your</p> <p>16 deposition, which is your original report filed in</p> <p>17 this case.</p> <p>18 Q. Can you confirm to us that this appears</p> <p>19 to be a true and correct copy of your original</p> <p>20 report?</p> <p>21 A. (Pause.)</p> <p>22 It does.</p> <p>23 Q. Did you have an opportunity to review</p> <p>24 your report before you appeared here to testify</p> <p>25 today?</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Yes.</p> <p>2 Q. Did you note any errors in the report?</p> <p>3 A. Nothing substantive.</p> <p>4 Q. Is it true that you do not intend to</p> <p>5 offer in this case any opinions not -- not stated in</p> <p>6 those two reports?</p> <p>7 A. As I sit here today, I intend to offer</p> <p>8 the opinions in this report and -- and that's it.</p> <p>9 As I sit here today.</p> <p>10 Q. And you've not changed any of your</p> <p>11 opinions since issuing those reports. Is that true?</p> <p>12 A. That's correct.</p> <p>13 Q. You're serving as an expert here for all</p> <p>14 the states that are plaintiffs in this matter, and</p> <p>15 that includes Puerto Rico. Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Can we have the understanding that when I</p> <p>18 talk about "the states" or ask you a question about</p> <p>19 the states, unless I designate Puerto Rico, that I'm</p> <p>20 talking about the 16 states plus Puerto Rico that</p> <p>21 are the plaintiffs in this case?</p> <p>22 A. Yes, we can, and hopefully that would</p> <p>23 work both ways then.</p> <p>24 Q. Yes.</p> <p>25 A. Okay.</p>

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<p>1 Q. Unless we want to specify something about</p> <p>2 Puerto Rico when we refer to the plaintiffs or the</p> <p>3 states, it's all 17 of them. Fair enough?</p> <p>4 A. Fair enough.</p> <p>5 Q. Now, am I correct that you are not</p> <p>6 offering any opinions regarding civil penalties in</p> <p>7 this case?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. I am offering the opinions that I have</p> <p>10 listed in each one of these reports, without</p> <p>11 exception. And to the extent that they relate to</p> <p>12 civil penalties, then -- then I have opinions</p> <p>13 related to civil penalties. To the extent they</p> <p>14 don't, then -- then I don't. But these are the</p> <p>15 opinions that I'm offering.</p> <p>16 Q. Yes. As specified expressly in the</p> <p>17 reports? Is that what you're telling me?</p> <p>18 A. Yes, my opinions are as specified in the</p> <p>19 reports.</p> <p>20 Q. Okay. And you're not offering opinions</p> <p>21 on any topics other than civil penalties, as I</p> <p>22 understand it. Is that true?</p> <p>23 A. Again, I'm going to say that my opinions</p> <p>24 are written -- expressly written in both of these</p> <p>25 reports. I'm going to testify to those opinions,</p>	<p>1 A. Yes.</p> <p>2 Q. Under both federal and state law?</p> <p>3 A. Whatever laws that they're -- they're</p> <p>4 claiming -- invoking in their claims, those would be</p> <p>5 the laws that are at issue.</p> <p>6 Q. Where do we find those listed, according</p> <p>7 to your scope of work?</p> <p>8 A. (Pause.)</p> <p>9 The fourth amendment -- amended</p> <p>10 complaint.</p> <p>11 Q. Okay. And so the conduct that you are</p> <p>12 undertaking to evaluate is included in the fourth</p> <p>13 amended complaint filed by the plaintiffs. True?</p> <p>14 A. Yes.</p> <p>15 Q. And you are assuming, for purposes of</p> <p>16 your calculation of civil penalties, that the</p> <p>17 defendant has been found guilty of that misconduct.</p> <p>18 Is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And who was it that directed that you</p> <p>21 make that assumption for your penalties work?</p> <p>22 MR. COLLIER: I'm going to object on</p> <p>23 the basis of the Court's order limiting expert</p> <p>24 discovery, Paragraph 5.11.</p> <p>25 To the extent that the assumption was</p>
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<p>1 and to the extent that they relate to something</p> <p>2 other than civil penalties, then that's what I'm</p> <p>3 going to testify to.</p> <p>4 Q. And you are -- you have limited, in</p> <p>5 writing, in your reports, what you're opining on.</p> <p>6 Is that true?</p> <p>7 A. Would you -- I don't understand your</p> <p>8 question. I'm sorry.</p> <p>9 Q. You are not offering opinions on</p> <p>10 liability in this case. True?</p> <p>11 A. That is true. I am assuming liability in</p> <p>12 this case.</p> <p>13 Q. And your analysis is predicated on the</p> <p>14 assumption that Google is found liable for the</p> <p>15 alleged misconduct in this case. True?</p> <p>16 A. That's correct.</p> <p>17 Q. What misconduct, sir, do you intend to</p> <p>18 include in your assignment there?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. The misconduct that the plaintiff states</p> <p>21 allege that Google has -- has engaged in. So</p> <p>22 every -- everything that the plaintiff states have</p> <p>23 alleged Google has engaged in as the misconduct.</p> <p>24 Q. Does the misconduct include all claims by</p> <p>25 all the states?</p>	<p>1 communicated to you by counsel, I direct you not to</p> <p>2 disclose any communications with counsel. However,</p> <p>3 you -- you can state the assumptions under which</p> <p>4 your expert report is undertaken.</p> <p>5 Q. Do you refuse to answer the question:</p> <p>6 Who directed you to assume that those were the</p> <p>7 sources of misconduct that you were to evaluate?</p> <p>8 A. Based on the advice of counsel, and I</p> <p>9 don't believe I can answer that.</p> <p>10 Q. How would you characterize the assumption</p> <p>11 that you have been directed to a doc for purposes of</p> <p>12 your work?</p> <p>13 A. I'm not sure I understand your question.</p> <p>14 Q. What is the nature of the misconduct that</p> <p>15 you have assumed for purposes of your work?</p> <p>16 MR. COLLIER: Objection; form.</p> <p>17 A. I am assuming liability in this case, and</p> <p>18 I am specifically -- liability related to the -- the</p> <p>19 Deceptive Trade Practices Act portion of -- of -- of</p> <p>20 the case.</p> <p>21 Q. All right.</p> <p>22 A. As a layperson, that's how I would</p> <p>23 describe it, but I am -- I am assuming that Google</p> <p>24 is found liable for the claims against them.</p> <p>25 Q. What -- would your opinions change if</p>

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<p style="text-align: right;">Page 14</p> <p>1 Google is found liable under some of the Deceptive 2 Trade Practices claims but not others? 3 A. I would have to understand more about 4 your hypothetical. 5 Q. There are certain types of misconduct 6 which are identified as mechanics or features of the 7 display advertising -- advertising exchange process. 8 Would that be generally true? 9 MR. COLLIER: Objection; form. 10 A. I'd have to go back and refresh my memory 11 from the complaint. 12 Q. Well, how about from your recollection 13 and understanding of the work that you've done, do 14 you understand that your work is to determine 15 penalties, civil penalties arising allegedly out of 16 liability for misconduct as it relates to certain 17 features of the ad exchange -- advertising exchange 18 process? 19 A. Yes. Certain features and -- and -- and 20 programs that were -- that were run by Google. 21 Q. We call that features or what other -- 22 what other terminology, mechanics? 23 A. I think of it as -- as program -- the -- 24 just the -- the various conduct at issue as various 25 programs that they ran on their auctions.</p>	<p style="text-align: right;">Page 16</p> <p>1 not all of those mechanics or features, does that 2 change the amount of your calculation of the 3 penalties here? 4 MR. COLLIER: Objection; form. 5 A. I believe I've given -- 6 MR. COLLIER: Excuse me. 7 THE WITNESS: Oh, I'm sorry. 8 MR. COLLIER: Just give me just a 9 minute to get my objection to form out so the court 10 reporter can -- I'm not going to stop you from 11 answering, but she can't take us both. 12 THE WITNESS: Fair enough. 13 Q. Could you answer the question, please, 14 sir? 15 THE WITNESS: I wasn't sure if you 16 were finished with your -- 17 MR. COLLIER: I just -- objection; 18 form, is all I needed to say. 19 THE WITNESS: Okay. 20 A. Would you please repeat the question? 21 Q. Yes. If the -- if Google is found liable 22 for misconduct as to less than the mechanics or 23 features of the ad exchange that I have outlined, 24 does that change your opinion as to the amount of 25 any civil penalties?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. For example, the dynamic revenue share 2 feature or mechanic of the Google ad exchange, was 3 that part of the scope of what you did? 4 A. Yes. 5 Q. And a dynamic allocation feature or 6 mechanic? 7 A. Is that the dynamic revenue share of the 8 DRS? 9 Q. Yes. 10 A. Yes. 11 Q. And Bernanke? 12 A. Yes. 13 Q. Alchemist? 14 A. That's a part of Bernanke, yes. 15 Q. Reserve price optimization? 16 A. Yes. That's correct. 17 Q. And you're assuming, for purposes of your 18 work and your calculation of these figures that are 19 appearing in, and opinions that appear in your 20 report, that Google is found liable for each of 21 those. Correct? 22 A. I've looked at it jointly and 23 independently. 24 Q. Okay. And have you -- what if Google is 25 found to have committed violations as to some but</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I believe I've considered all those 2 possibilities and my report addresses each of the 3 possibilities. 4 Q. Is the answer to my question, is there a 5 circumstance in your work where you have concluded 6 that a liability finding of less than all of those 7 five mechanics or features would change your -- your 8 conclusion as to the total penalties? 9 A. I don't believe it would change the 10 conclusion of my penalties because I believe the 11 violation counts are -- are -- are large enough 12 under each individual one or in aggregate that 13 would -- that would cause -- cause Google to fall 14 within that penalty range that I have established. 15 Q. So if the only thing that a trier of fact 16 find -- found liability for was misconduct as to 17 dynamic revenue sharing, your conclusion as to the 18 total penalties to be charged here would remain the 19 same? 20 A. Yes. As I explained, I think the -- the 21 violation counts are such that you get to the 22 portion of -- of what is a reasonable penalty that 23 falls within my range. I mean, you get into the -- 24 the reasonable penalty for those violation counts, 25 that would fall into my range.</p>

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<p>1 Q. And you've opined on a range of anywhere</p> <p>2 from approximately \$7 billion on the low side to</p> <p>3 near 22 billion on the high side. Would that be</p> <p>4 true?</p> <p>5 A. I can give the exact numbers, but</p> <p>6 generally, that's appropriate -- generally the</p> <p>7 range.</p> <p>8 Q. Under the Andrien theory penalty</p> <p>9 calculations, if, for example, only one of the</p> <p>10 alleged misconduct is found to have been committed</p> <p>11 by Google, the entire range remains identical. Is</p> <p>12 that true?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 Go ahead.</p> <p>15 A. Yes, I believe that, as I said</p> <p>16 previously, the violation counts for each individual</p> <p>17 one are sufficient enough that would push the</p> <p>18 reasonable appropriate penalty into -- into the</p> <p>19 range that I have calculated.</p> <p>20 Q. Uh-huh. And would the -- if -- if there</p> <p>21 was only one violation of the five we're talking</p> <p>22 about at this moment, is it your position that the</p> <p>23 same range of per violation value would remain</p> <p>24 constant?</p> <p>25 A. Not necessarily, no. As I've kind of --</p>	<p>1 Google is not found liable under -- under the</p> <p>2 States' antitrust claims?</p> <p>3 A. No, my opinions would not change.</p> <p>4 Q. Okay. So if there's zero -- if there's a</p> <p>5 finding of zero liability for the antitrust claims,</p> <p>6 your range of recommended penalties remains 7 to</p> <p>7 \$22 billion. Is that fair?</p> <p>8 A. Well, in -- maybe we should be specific</p> <p>9 when we're talking about the range I had. But</p> <p>10 generally, that's fair, yes.</p> <p>11 Q. Okay. Do your opinions have anything to</p> <p>12 do with the States' antitrust claims?</p> <p>13 A. I understand that there's antitrust</p> <p>14 claims and I understand that the States allege that</p> <p>15 the conduct at issue -- the deceptive conduct at</p> <p>16 issue in this case has -- has resulted in -- in</p> <p>17 market power for -- for Google in certain areas of</p> <p>18 its AdTech stack. And -- and -- and -- but my -- my</p> <p>19 penalty amount is based on the deceptive trade</p> <p>20 practices conduct.</p> <p>21 Q. And are -- is your penalty limited to</p> <p>22 Deceptive Trade Practices Act civil penalties</p> <p>23 provision of that statute?</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 A. The statute for each state that deals</p>
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<p>1 I -- I believe I've explained in my report, I looked</p> <p>2 at the various violations, determined violation</p> <p>3 counts, looked at appropriate per violation</p> <p>4 penalties, and assessed in a -- a holistic manner</p> <p>5 given the -- the -- the three factors that I was</p> <p>6 asked to -- asked to consider in my -- in my work</p> <p>7 and then based on that, came to what I believe was a</p> <p>8 reasonable penalty range.</p> <p>9 And so if you lower the count</p> <p>10 sufficiently, you'd still have to have a penalty, I</p> <p>11 believe, that falls into that range. So by</p> <p>12 definition, that would mean you might have to</p> <p>13 increase the per penalty -- the per violation</p> <p>14 penalty.</p> <p>15 Q. You're going to stick with the total of 7</p> <p>16 to \$20 billion no matter how many violations are or</p> <p>17 are not found. True?</p> <p>18 A. No, that's not --</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 THE WITNESS: Oh, sorry.</p> <p>21 MR. COLLIER: Mr. Andrien, please.</p> <p>22 Objection; form.</p> <p>23 Proceed.</p> <p>24 A. No, that's not true.</p> <p>25 Q. Would your opinions change, sir, if</p>	<p>1 with that.</p> <p>2 Q. Yes.</p> <p>3 It is. Put another way, is your -- do</p> <p>4 your opinions -- are they based on the violation of</p> <p>5 antitrust statutes in each of those states?</p> <p>6 A. They are not.</p> <p>7 Q. Okay. And they are not calculated under</p> <p>8 the penalties provisions of each of those states'</p> <p>9 antitrust laws. True?</p> <p>10 A. That is true.</p> <p>11 Q. Okay. That's a separate statute, you</p> <p>12 would agree. Right?</p> <p>13 A. I'm not a lawyer, but that -- as I</p> <p>14 understand it, that's a separate -- there would be</p> <p>15 separate laws that would govern antitrust violations</p> <p>16 than the ones that govern the deceptive trade</p> <p>17 practices.</p> <p>18 Q. And they have, under the antitrust laws</p> <p>19 of each of those states, distinct and separate</p> <p>20 elements that are required to be proved in order to</p> <p>21 establish liability, as you would understand it.</p> <p>22 Right?</p> <p>23 A. Again, as a nonlawyer, as I understand</p> <p>24 it, that would be -- that would be true.</p> <p>25 Q. And nobody, to your understanding, has</p>

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<p style="text-align: right;">Page 22</p> <p>1 sued and is seeking to recover under the antitrust 2 statutes actual damages, for example. Would that be 3 true? 4 MR. COLLIER: Objection; form. 5 A. I am not aware of the plaintiffs seeking 6 damages under the antitrust statutes, but that's 7 outside the scope of what I've been asked to 8 consider. 9 Q. Yes. And you certainly haven't made any 10 calculation to determine any actual harm or damages 11 under the statutes -- the states' antitrust 12 statutes. True? 13 A. That is correct. 14 Q. And you understand that some of those 15 states' antitrust statutes have trebling provisions 16 if they are proved. Right? 17 A. I -- 18 MR. COLLIER: Objection; form. 19 A. I do understand that. 20 Q. And have you seen any indication that any 21 of the States are seeking to recover treble any 22 actual damages in this case? 23 MR. COLLIER: Objection; form. 24 A. I'm addressing penalties. I'm not 25 addressing damages so I haven't analyzed one way or</p>	<p style="text-align: right;">Page 24</p> <p>1 issue in this case? 2 MR. COLLIER: Objection; form. 3 A. I have not provided any opinions in my 4 reports relative to whether or not Google is liable 5 for the deceptive trade practices claims against 6 them. 7 Q. Okay. And you don't intend at trial to 8 express any opinion, yea or nay, on any of those 9 alleged violations. Fair? 10 MR. COLLIER: Objection; form. 11 A. As I sit here today, I -- I intend to 12 offer the opinions that are in my report, without 13 exception, to those opinions and -- but that's, as I 14 sit here today, the limit of what I'm intending to 15 testify to. 16 Q. And you do not intend to offer any 17 opinions as to the violation of either of the 18 antitrust statutes or antitrust laws we've 19 established that. Right? 20 A. As I sit here today I intend to offer the 21 opinions that -- that are listed in my report to the 22 extent that any of them relate to, again, I'm not a 23 lawyer. To the extent that any of them relate to 24 antitrust or any other category. That's what I 25 intend to -- to opine on.</p>
<p style="text-align: right;">Page 23</p> <p>1 another any damages related to this case. I'm -- 2 I'm purely focused on penalties. 3 Q. Have you seen, as part -- any part of 4 your work, any indication that the States are 5 seeking to recover either actual or trebled 6 antitrust damages in this case? 7 A. As part of my work, I have not seen that, 8 but, again, that's not part of the scope of my work. 9 Q. And you've not seen any calculation of 10 any penalties, civil penalties for violation of any 11 of those States' antitrust statutes. True? 12 A. Would you repeat that question? 13 Q. Yes. You've likewise not seen any 14 indication that anybody has calculated or is 15 requesting and/or is going to try in this case 16 penalties under the antitrust statutes of the 17 States. Right? 18 MR. COLLIER: Objection; form. 19 A. Again, I'm not a lawyer, but I -- I have 20 not seen anything that I -- that I would believe 21 addresses that. But I'm not a lawyer. 22 Q. And with respect to the -- as you sit 23 here today, based upon your assumption, do you have 24 any personal opinion as to whether Google is liable 25 for any of the deceptive trade practices that are at</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. So you -- let's say just be very 2 specific. I realize your report contains a lot of 3 references to opinions and the like. You'd agree 4 with that. Right? 5 A. It's relative terms. I have my opinions 6 that are stated in my report and they're very 7 specifically outlined in each report. 8 Q. Did your assignment, as you undertook it, 9 include expressing any opinions on liability for 10 violation of any of the state statute -- antitrust 11 statutes? 12 A. I have assumed liability in my work. So 13 I have not undertaken work to establish liability. 14 Q. And you do not intend to undertake to 15 testify as to opinions about violations of any of 16 the antitrust laws. True? 17 MR. COLLIER: Objection; form. 18 A. Would you repeat the question? 19 Q. You do not intend to undertake to express 20 any opinions on violations of any of the states' 21 antitrust laws. Correct? 22 MR. COLLIER: Objection; form. 23 A. Again, I intend to provide the opinions 24 that are expressed in my report. And without 25 exception, I intend to testify to those opinions.</p>

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<p style="text-align: right;">Page 26</p> <p>1 To the extent that any of them relate to antitrust</p> <p>2 in any way, shape, or form, I haven't -- then --</p> <p>3 then those are the opinions I'm going to give.</p> <p>4 But they don't relate to the antitrust,</p> <p>5 then -- then the -- those are still the opinions I'm</p> <p>6 going to give.</p> <p>7 Q. Can you identify a single antitrust</p> <p>8 liability opinion that you intend to give?</p> <p>9 A. I don't believe I have, what I would</p> <p>10 refer to as a nonlawyer, as a liability opinion in</p> <p>11 this report. So that -- that's how I could</p> <p>12 categorize it as a nonlawyer. To the extent that</p> <p>13 you have a different definition as a lawyer of how</p> <p>14 to categorize my opinion or anybody else does, these</p> <p>15 are the opinions that I'm going to -- to provide</p> <p>16 and -- and testify to at trial.</p> <p>17 Q. And you have not undertaken to determine</p> <p>18 whether or not Google is liable for any violation of</p> <p>19 any of the antitrust statutes. True?</p> <p>20 A. I have assumed liability in -- in my</p> <p>21 work. So my work assumes that they are found liable</p> <p>22 for that.</p> <p>23 Q. And the -- that tells us that you have</p> <p>24 not done any work, therefore, to determine whether</p> <p>25 or not a violation of the antitrust laws occurred</p>	<p style="text-align: right;">Page 28</p> <p>1 question.</p> <p>2 Q. Well, you understand the difference</p> <p>3 between offering opinions as to liability in this</p> <p>4 case for violation of, for example, of the antitrust</p> <p>5 laws. You have a concept of that in mind as an</p> <p>6 expert, don't you?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. I have an understanding as an expert</p> <p>9 that -- that I am assuming liability and, therefore,</p> <p>10 I am not required to establish liability.</p> <p>11 Q. And for that reason you've not undertaken</p> <p>12 the kind of investigation that would be required to</p> <p>13 offer an opinion as to whether or not a liability</p> <p>14 event has occurred under the antitrust laws. Right?</p> <p>15 A. I have undertaken the type of work to</p> <p>16 support the opinions that I have. And that's how</p> <p>17 I'm using the -- the work that I've undertaken.</p> <p>18 Q. Are you offering any opinions about the</p> <p>19 relevant market for antitrust purposes? Have you</p> <p>20 been retained to do that?</p> <p>21 A. I have not been retained to provide</p> <p>22 opinions on a relevant antitrust market, if -- if</p> <p>23 I'm defining a relevant market as an economist.</p> <p>24 Q. Are you offering any opinions about</p> <p>25 the -- about what kinds of advertising are</p>
<p style="text-align: right;">Page 27</p> <p>1 here. True?</p> <p>2 A. I have done work to support the opinions</p> <p>3 that I have in this case. I've listed the opinions</p> <p>4 that I have in the front of my reports and -- and</p> <p>5 I've -- intend to testify to those. And however</p> <p>6 anybody wants to categorize it as a lawyer, that's</p> <p>7 different maybe than I would as a -- as a nonlawyer.</p> <p>8 These are the opinions that I intend to offer and</p> <p>9 the work that I've done supports those opinions.</p> <p>10 Q. And it is not intended to support</p> <p>11 opinions of liability based upon the antitrust laws.</p> <p>12 True?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. I have assumed liability. So I --</p> <p>15 I've -- I've not needed in my work to -- to</p> <p>16 purposely support liability because I have assumed</p> <p>17 it --</p> <p>18 Q. Okay.</p> <p>19 A. -- therefore, but the opinions that I</p> <p>20 have are supported with the work that I have done.</p> <p>21 I intend to testify to the opinions that I have and</p> <p>22 the work that I have done. And to the extent that</p> <p>23 covers -- that somehow covers something under</p> <p>24 antitrust liability -- antitrust liabilities then --</p> <p>25 then so be it. I don't know how else to answer that</p>	<p style="text-align: right;">Page 29</p> <p>1 substitutes for any other kind of advertising?</p> <p>2 A. Again, I'm just going to say I've been --</p> <p>3 I'm offering the opinions that I've listed in the</p> <p>4 front of my reports, done the work to support those</p> <p>5 opinions, and -- and I'm going to offer those</p> <p>6 opinions without accept -- acceptance. To the</p> <p>7 extent that they address -- somehow address that</p> <p>8 question, then they address it. If they don't</p> <p>9 address that question, then they don't address it.</p> <p>10 Q. Do you understand whether social media</p> <p>11 advertising is included in the antitrust aspects of</p> <p>12 the case?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. Would you repeat the question?</p> <p>15 Q. Yes. Do you understand whether social</p> <p>16 media advertising, as you understand that concept,</p> <p>17 is included in display advertising that's at issue</p> <p>18 in this case?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. I would have to go back and read the --</p> <p>21 reread the complaint. I don't recall one way or</p> <p>22 another as I sit here.</p> <p>23 Q. Well, as you sit here, do you understand</p> <p>24 whether or not you included in the display</p> <p>25 advertising products those that relate to or are</p>

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<p style="text-align: right;">Page 30</p> <p>1 found in social media advertising?</p> <p>2 A. Well, I do understand as I sit here, for</p> <p>3 example, that auctions involving Facebook, which is</p> <p>4 a social media account were -- were -- were relevant</p> <p>5 that a -- that Facebook is -- would be part of the</p> <p>6 AdTech stack at issue here.</p> <p>7 Q. Okay. So Facebook. What other -- what</p> <p>8 of the other features that you have understood in</p> <p>9 calculating these penalties make up the market</p> <p>10 that's at issue here?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. I'm -- I'm sorry. I don't understand</p> <p>13 your question --</p> <p>14 Q. Yes.</p> <p>15 A. -- could you repeat it?</p> <p>16 Q. You said you -- you used Facebook as an</p> <p>17 example as of one of the features or one of the</p> <p>18 aspects of technology has been involved in what</p> <p>19 you're evaluating for purposes of your penalties.</p> <p>20 What are some others?</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 A. Could you define what you mean by</p> <p>23 "features"?</p> <p>24 Q. Yes. Mechanics, products that make up</p> <p>25 the stack, as I think you referred to it.</p>	<p style="text-align: right;">Page 32</p> <p>1 display advertising segment of its business. Is</p> <p>2 that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And could you give us the names of the</p> <p>5 companies that you had in mind when you included</p> <p>6 that in your calculations?</p> <p>7 A. I don't understand -- when I included</p> <p>8 what in my calculations?</p> <p>9 Q. The acquisition of certain businesses or</p> <p>10 companies as part of building the display</p> <p>11 advertising segment of Google's business?</p> <p>12 A. All right. I -- I just want to be clear</p> <p>13 that -- that the acquisitions themselves are not</p> <p>14 part of -- of the quantification of penalties.</p> <p>15 There's no penalty associated with the acquisition</p> <p>16 that I've calculated. I just wanted to be clear.</p> <p>17 But I do understand that they've engaged in</p> <p>18 acquisitions during the -- during -- during the</p> <p>19 course of -- of Google's life. And I've discussed</p> <p>20 in my report various acquisitions related to display</p> <p>21 advertising.</p> <p>22 Q. Are you -- do you suggest as part of your</p> <p>23 opinion that any of those acquisitions -- and that</p> <p>24 would be DoubleClick and the two subsequent</p> <p>25 acquisitions in particular, would it not?</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Okay. So, for example, I understand</p> <p>2 there's a auction platform called AdX that's at</p> <p>3 issue in this case. There is supply side platforms</p> <p>4 that -- that the publishers would use. There's</p> <p>5 demand side platforms that advertisers would use. I</p> <p>6 understand that users when they go on to websites</p> <p>7 create queries for these types of auctions that take</p> <p>8 place.</p> <p>9 Q. Do you include mobile apps where</p> <p>10 advertisements appear?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. I do understand that mobile apps is part</p> <p>13 of their -- that -- something called AdMob is one of</p> <p>14 the, as you say, features of Google's AdTech Stack</p> <p>15 and that some of these conducts were targeted at</p> <p>16 AdMob.</p> <p>17 Q. So that is part of or embraced within the</p> <p>18 impacted features that are at issue and you have</p> <p>19 quantified?</p> <p>20 A. Yes.</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 Q. The answer is yes?</p> <p>23 A. The answer is yes.</p> <p>24 Q. Okay. Google has made certain</p> <p>25 acquisitions of companies with respect to the</p>	<p style="text-align: right;">Page 33</p> <p>1 A. If I could just go find exactly the names</p> <p>2 of them. Double -- DoubleClick would be one. I'd</p> <p>3 have to go find where the -- the names of the others</p> <p>4 because I don't recall as I sit here so.</p> <p>5 Q. There's the two others that were in 2008,</p> <p>6 2011, 2012, sound about right?</p> <p>7 A. I -- I -- I don't recall the dates.</p> <p>8 They're written in my reports. So if you give me a</p> <p>9 minute here, I will take a look and we can -- we can</p> <p>10 discuss them more fulsomely.</p> <p>11 (Pause.)</p> <p>12 All right. So I'm on Page 68 of my</p> <p>13 initial report. And the DoubleClick acquisition was</p> <p>14 in 2008. The Invite Media acquisition was in 2010.</p> <p>15 And the AdMob acquisition was in 2011.</p> <p>16 Q. Have you formed any opinion as to whether</p> <p>17 any of those acquisitions were unlawful?</p> <p>18 A. I've not -- I've not -- I've not -- I'm</p> <p>19 not a lawyer, I have not addressed whether these are</p> <p>20 unlawful acquisitions or not.</p> <p>21 Q. Were you told to assume? Have you</p> <p>22 assumed that they were unlawful?</p> <p>23 A. I have not assumed that they're unlawful.</p> <p>24 Q. Anticompetitive or otherwise improper?</p> <p>25 A. I have not assumed either of those.</p>

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<p>1 Q. Have you offered any opinions about</p> <p>2 whether any of the conduct at issue was</p> <p>3 anticompetitive under state or federal antitrust</p> <p>4 law?</p> <p>5 A. Again, I've offered the opinions that are</p> <p>6 listed in the front of each one of my reports. I</p> <p>7 intend to testify to those opinions without</p> <p>8 exception. I have not -- I am not a lawyer. So to</p> <p>9 the extent that any of them relate to antitrust laws</p> <p>10 or they don't relate to antitrust laws, that's the</p> <p>11 answer to that question.</p> <p>12 Q. Well, you don't intend to give the</p> <p>13 opinion that they do or -- that they -- they</p> <p>14 constitute anticompetitive activities, do you?</p> <p>15 A. I am giving the opinions that are listed</p> <p>16 in my report, and I plan to testify to those</p> <p>17 opinions without exception. And -- and I -- I'm not</p> <p>18 categorizing, based on your definitions, whether</p> <p>19 they -- they do that or not. I'm just telling you,</p> <p>20 these are the opinions, the work that I've put forth</p> <p>21 to support those opinions, and that's what I'm here</p> <p>22 to testify to.</p> <p>23 Q. As you sit here, can you think of a</p> <p>24 single opinion that you are offering wherein</p> <p>25 independent of your assuming liability as to that</p>	<p>1 issue, that I'm not going to testify to those</p> <p>2 opinions.</p> <p>3 Q. Okay. Well, I just want to be sure that</p> <p>4 you're not intending to offer a single opinion, as</p> <p>5 you sit here, that you can think of, that some</p> <p>6 conduct is anticompetitive or otherwise unlawful, in</p> <p>7 connection with your calculations and opinions on</p> <p>8 these --</p> <p>9 A. Then the best --</p> <p>10 Q. -- civil penalties?</p> <p>11 A. -- the best thing I can say is then you</p> <p>12 should look at my opinions and determine whether</p> <p>13 they do that or not. Because these are my opinions.</p> <p>14 This is what I intend to testify to.</p> <p>15 Q. Okay. Do you intend to offer a single</p> <p>16 opinion that any conduct that is referenced in your</p> <p>17 report is -- that you have independently determined,</p> <p>18 that it is anticompetitive or unlawful or a</p> <p>19 violation --</p> <p>20 MR. COLLIER: Objection; form.</p> <p>21 Q. -- other than what somebody has told you</p> <p>22 to assume?</p> <p>23 MR. COLLIER: Objection; form.</p> <p>24 A. And so I've -- I have quantified</p> <p>25 violation counts in my report. So I do intend to</p>
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<p>1 conduct, you have concluded independently it's</p> <p>2 illegal or unlawful?</p> <p>3 MR. COLLIER: Objection; form.</p> <p>4 A. As I sit here, I don't believe I have</p> <p>5 concluded in any of my opinions that -- that conduct</p> <p>6 is unlawful. I'm not a lawyer. That would be</p> <p>7 outside my -- that would be outside the scope of my</p> <p>8 work in this case.</p> <p>9 Q. And your expertise as a nonlawyer. Is</p> <p>10 that what you're saying?</p> <p>11 A. It depends on what would need to be</p> <p>12 quantified for the -- I'm not -- my expertise might</p> <p>13 be relevant in -- in that type of analysis.</p> <p>14 Q. But since it wasn't part of your</p> <p>15 responsibility and undertaking here, you haven't</p> <p>16 done it and you're not giving any such opinion as to</p> <p>17 unlawful or anticompetitive conduct. True?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I am giving the opinions that I listed in</p> <p>20 my report. I plan to testify to those opinions</p> <p>21 without exception.</p> <p>22 To the extent that any of those opinions</p> <p>23 address that issue, then -- then I'm going to</p> <p>24 testify to those opinions.</p> <p>25 To the extent they don't address that</p>	<p>1 offer opinions on the number of violations. I'm</p> <p>2 offer -- I intend to offer the opinions that are in</p> <p>3 this report and that are in my other report, listed</p> <p>4 at the front. I'm going to offer those opinions</p> <p>5 without exception.</p> <p>6 And to the extent they address your</p> <p>7 question you just asked, then they do. To the</p> <p>8 extent they don't address the question that you just</p> <p>9 asked, then they don't.</p> <p>10 Q. As you sit here today, can you identify a</p> <p>11 single opinion you intend to give or include in your</p> <p>12 report that is based upon your own assessment and</p> <p>13 determination of the anticompetitive or unlawfulness</p> <p>14 of that conduct, other than what somebody has told</p> <p>15 you to assume? Have you independently done that</p> <p>16 with respect to any of your opinions?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. Would you please repeat the question one</p> <p>19 more time?</p> <p>20 Q. Yes, sir.</p> <p>21 Other than what people have -- somebody</p> <p>22 has directed you to assume with respect to</p> <p>23 anticompetitive or unlawful conduct in support of</p> <p>24 your opinions, other than what they've directed you</p> <p>25 to assume, can you point to a single opinion you</p>

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<p style="text-align: right;">Page 38</p> <p>1 intend to give that is -- expresses the opinion that</p> <p>2 you have independently determined liability and/or</p> <p>3 violation of any statute?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. So I am assuming, for purposes of my</p> <p>6 work, liability. I have put forth the opinions in</p> <p>7 my report, in the front of each of those reports,</p> <p>8 what my opinions are and what I intend to testify</p> <p>9 to, and the rest of the report gives the basis for</p> <p>10 those opinions.</p> <p>11 To the extent they address what you just</p> <p>12 asked, then they do. To the extent they don't</p> <p>13 address what you just asked, then they don't.</p> <p>14 Q. And you -- are you able to sit here and</p> <p>15 identify a single alleged anticompetitive conduct or</p> <p>16 event that you have investigated independently, of</p> <p>17 any assumption you've been directed to hold, that</p> <p>18 that constitutes an unlawful act or a misconduct</p> <p>19 that is supportive of liability?</p> <p>20 MR. COLLIER: Objection; form.</p> <p>21 A. Again, I am not a lawyer. I am a</p> <p>22 financial economist. I've -- I've put forth the</p> <p>23 opinions that I have based on the work that I've</p> <p>24 done.</p> <p>25 And so to the extent that they -- they --</p>	<p style="text-align: right;">Page 40</p> <p>1 To the extent that they meet the</p> <p>2 categorization that you're implying, then they do.</p> <p>3 To the extent they don't, then they don't.</p> <p>4 Q. Have you -- have you undertaken any</p> <p>5 independent investigation as to whether or not any</p> <p>6 of the five mechanics or ad exchange features that</p> <p>7 we've talked about constitute, in fact,</p> <p>8 misconduct --</p> <p>9 MR. COLLIER: Objection; form.</p> <p>10 Q. -- independent of the assumption?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. Would you repeat the question?</p> <p>13 Q. Yes.</p> <p>14 Have you conducted any independent</p> <p>15 investigation to form an opinion as to whether or</p> <p>16 not any of those five areas that we've talked about</p> <p>17 the features, were unlawful or constituted</p> <p>18 misconduct under the statutes?</p> <p>19 A. I have assumed for purposes of my work</p> <p>20 that those features, as you refer to them, or</p> <p>21 conduct as the various programs, that they were</p> <p>22 unlawful.</p> <p>23 Q. Okay.</p> <p>24 A. I've assumed that for the purposes of my</p> <p>25 work.</p>
<p style="text-align: right;">Page 39</p> <p>1 these opinions address what you just asked, and they</p> <p>2 do. To the extent they don't, then they don't.</p> <p>3 These are my opinions. They are very</p> <p>4 clearly written, they're -- they're supported</p> <p>5 throughout the reports. That's what I plan to</p> <p>6 testify to.</p> <p>7 Q. And -- and across the board you've</p> <p>8 operated under the assumption that you are not to</p> <p>9 independently investigate and conclude or form an</p> <p>10 opinion as to the illegality or unlawfulness of any</p> <p>11 alleged misconduct. Would that be true?</p> <p>12 A. In performing my work I have assumed</p> <p>13 liability.</p> <p>14 Q. And does -- and as you understood it in</p> <p>15 assuming liability, did that exclude your having any</p> <p>16 obligation or responsibility to independently</p> <p>17 determine whether some conduct at issue is unlawful</p> <p>18 or illegal?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. I have not thought about whether or not</p> <p>21 my opinions can be used in that way one way or</p> <p>22 another. I have done my -- my opinions based on the</p> <p>23 work that I was asked to perform, assuming</p> <p>24 liability, and I've supported those opinions. I'm</p> <p>25 here to testify about those opinions.</p>	<p style="text-align: right;">Page 41</p> <p>1 I've -- based on the work that I've done,</p> <p>2 I've reached the opinions that I've reached,</p> <p>3 supported those opinions.</p> <p>4 To the extent that those opinions address</p> <p>5 the question you just asked, then they do. To the</p> <p>6 extent that they don't address that question, then</p> <p>7 they don't.</p> <p>8 Q. Do you include -- or intend to include</p> <p>9 within that answer -- do you intend that you are</p> <p>10 going to function here as a second opinion on -- on</p> <p>11 misconduct and the unlawfulness of any of those ad</p> <p>12 features?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. I make -- I make no assumption one way or</p> <p>15 another. I am assuming that I'm going to testify to</p> <p>16 the opinions that I have in these reports, without</p> <p>17 exception. And I'm going to testify to the support</p> <p>18 and the basis for those opinions.</p> <p>19 Q. You conducted no independent</p> <p>20 investigation directed at whether or not those</p> <p>21 mechanics or features violate the antitrust</p> <p>22 statutes. True?</p> <p>23 MR. COLLIER: Objection; form.</p> <p>24 A. I've directed -- I've done the</p> <p>25 independent work necessary to support the opinions</p>

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<p style="text-align: right;">Page 42</p> <p>1 that I have in my report. To the extent that those</p> <p>2 opinions address your categorization, then I have</p> <p>3 done that work. To the extent that they don't, then</p> <p>4 I have not.</p> <p>5 Q. So are you -- are you suggesting to the</p> <p>6 Court or the fact finder that you have conducted an</p> <p>7 independent investigation of any of the misconduct</p> <p>8 and/or unlawful conduct at issue in this case and</p> <p>9 formed an independent opinion as to whether it was</p> <p>10 or was not illegal?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. I'm suggesting to the Court that my</p> <p>13 opinions that I intend to offer and provide in this</p> <p>14 case, which are listed in the front of both of my</p> <p>15 reports, that I've done the independent work to</p> <p>16 support those opinions. That's all I'm suggesting</p> <p>17 to the Court.</p> <p>18 Q. And those opinions are limited to</p> <p>19 quantifying, as I understand it, the civil penalties</p> <p>20 under the DTPA. True?</p> <p>21 A. Those opinions are -- are based on the</p> <p>22 assignment that I was given to -- to determine what</p> <p>23 appropriate penalties would be, analyzing three very</p> <p>24 specific factors that I was asked to analyze.</p> <p>25 Q. What were those three factors that you</p>	<p style="text-align: right;">Page 44</p> <p>1 Right?</p> <p>2 A. That's the lens in which I was asked to</p> <p>3 view my quantification of appropriate penalty.</p> <p>4 Q. Okay. Who asked -- how did you decide to</p> <p>5 pick those three factors to consider and base your</p> <p>6 calculation of penalties on?</p> <p>7 MR. COLLIER: Objection.</p> <p>8 5.11 of the Court's order prohibits</p> <p>9 you from disclosing any communications with counsel.</p> <p>10 If you can answer that question</p> <p>11 without disclosing communications with counsel,</p> <p>12 you're free to do so.</p> <p>13 A. That was my direct assignment.</p> <p>14 Q. That was your direct assignment in this</p> <p>15 case, limited to that, right, specified?</p> <p>16 A. That was my assignment in this case.</p> <p>17 Q. Okay. And you refuse to answer and tell</p> <p>18 us who directed you to adopt that -- that lens</p> <p>19 through which you were to calculate these penalties?</p> <p>20 MR. COLLIER: Mr. Gibbs, now your</p> <p>21 violations of the Court's order are becoming</p> <p>22 intentional. I have instructed him not to disclose</p> <p>23 communications with counsel and I have allowed him</p> <p>24 to answer if he can answer without.</p> <p>25 So I will instruct again,</p>
<p style="text-align: right;">Page 43</p> <p>1 were advised to opine on?</p> <p>2 A. So I have those listed in my report. I'm</p> <p>3 just going to read those so I don't -- I prefer to</p> <p>4 read them the way I have them in my report, than to</p> <p>5 try to summarize them. So if you just give me a</p> <p>6 moment, I'll get to those.</p> <p>7 (Pause.)</p> <p>8 Q. Let me help you out.</p> <p>9 A. It is --</p> <p>10 Q. Page 3.</p> <p>11 A. Yeah, it's on Page 40 here. What</p> <p>12 I've been -- you're on Page 3?</p> <p>13 Q. You indicate at Page 3, in the center of</p> <p>14 the first paragraph, 7, quote, I address the amount</p> <p>15 necessary to deter future misconduct. No. 1.</p> <p>16 Right?</p> <p>17 A. Yes.</p> <p>18 Q. No. 2, the history of past violations.</p> <p>19 Right?</p> <p>20 A. Yes.</p> <p>21 Q. And 3, the ability of the offending party</p> <p>22 to pay a penalty. Right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. Those are the three factors that</p> <p>25 you indicate that you were directed to consider.</p>	<p style="text-align: right;">Page 45</p> <p>1 Mr. Andrien, if you can answer that question without</p> <p>2 disclosing communications with counsel, please do</p> <p>3 so. If you cannot, please indicate.</p> <p>4 A. I don't believe I can answer that</p> <p>5 question.</p> <p>6 Q. Okay. Did you -- did you conduct any</p> <p>7 investigation -- okay. Do you intend, therefore,</p> <p>8 not to answer the question?</p> <p>9 A. Based on advice -- or guidance from --</p> <p>10 from Mr. Collier, I don't believe I can -- I can</p> <p>11 answer that question without violating the</p> <p>12 stipulation.</p> <p>13 Q. In the -- in preceding then on those</p> <p>14 three factors, did you agree as an independent</p> <p>15 expert or purported independent expert that those</p> <p>16 were the proper three factors to consider under the</p> <p>17 DTPA statutes?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I have looked at various statutes. I</p> <p>20 believe these are generally factors that -- that a</p> <p>21 trier of fact would consider and -- and I've been</p> <p>22 asked to consider those. So as a nonlawyer, that's</p> <p>23 what I've been asked to do. I've reviewed whether</p> <p>24 that's a reasonable assignment. I believe it is a</p> <p>25 reasonable assignment based on my review of the</p>

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<p style="text-align: right;">Page 46</p> <p>1 statutes and -- and I did that work.</p> <p>2 Q. Okay. So those are the three that you</p> <p>3 were directed to use and you said you had the right,</p> <p>4 obviously, to say, I don't think those are the --</p> <p>5 the correct ones. That would be something, as an</p> <p>6 independent expert, you would reserve to yourself.</p> <p>7 Correct?</p> <p>8 A. Well, again, I'm not a lawyer and legally</p> <p>9 interpreting what is and what is not. That's --</p> <p>10 that's beyond my scope as a -- as a financial</p> <p>11 expert. I -- I've reviewed the statutes as a</p> <p>12 financial expert and believe these were reasonable</p> <p>13 factors to consider from a financial economic</p> <p>14 perspective. And, therefore, I went forth and</p> <p>15 conducted my analysis as such.</p> <p>16 Q. Okay. But did you -- did you agree,</p> <p>17 then, to focus on those three elements in arriving</p> <p>18 at your numbers?</p> <p>19 A. I did focus on those three elements in --</p> <p>20 in -- in arriving at my number. Those -- those</p> <p>21 three elements were a part of my analysis.</p> <p>22 Q. And are you, sir -- do you hold yourself</p> <p>23 out as an expert on online auction mechanics?</p> <p>24 A. That's -- that's for a court to decide,</p> <p>25 whether I have expertise beyond what a average juror</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Have you ever been -- have you --</p> <p>2 MR. COLLIER: I don't believe -- I'm</p> <p>3 sorry. I don't believe he was done, Mr. Gibbs.</p> <p>4 A. I believe I have -- I believe I have done</p> <p>5 work in that capacity that would involve different</p> <p>6 aspects of -- of that.</p> <p>7 Q. Have you ever been retained to provide</p> <p>8 opinions regarding -- regarding to the ad --</p> <p>9 advertising technology business?</p> <p>10 A. I -- I don't believe I've worked on -- on</p> <p>11 case work that involves the advertising technology</p> <p>12 industry --</p> <p>13 Q. Have you ever --</p> <p>14 A. -- prior this case.</p> <p>15 Q. Excuse me. Have you ever taught a class</p> <p>16 on advertising technology?</p> <p>17 A. I haven't taught a class entitled</p> <p>18 "advertising technology" but I've taught -- for 12</p> <p>19 years, I taught a master's in marketing program.</p> <p>20 And part of my work as a -- in that -- in that class</p> <p>21 that I taught for 12 years was -- was to talk about</p> <p>22 various marketing advertising campaigns, how they</p> <p>23 work, how to assess whether they're going to be</p> <p>24 profitable or not.</p> <p>25 Q. Have you ever done any work evaluating</p>
<p style="text-align: right;">Page 47</p> <p>1 would have in that area.</p> <p>2 Q. My question is, do you hold yourself out</p> <p>3 as an online auction mechanics expert?</p> <p>4 MR. COLLIER: Objection to form.</p> <p>5 A. I understood your question and I was</p> <p>6 trying to give a -- what I believe was the</p> <p>7 appropriate answer to that question, is whether or</p> <p>8 not, as you're asking and I understand it, I'm an</p> <p>9 expert is up to a judge to decide. That's a legal</p> <p>10 determination.</p> <p>11 I understand that it's possible I might</p> <p>12 have experience, training or skill in the area that</p> <p>13 would be above the typical juror.</p> <p>14 Q. Before this -- you undertook this</p> <p>15 calculation, the responsibility for the civil</p> <p>16 penalties under the DTPA, had you ever heard of ^</p> <p>17 Ad Ex before, the advertising exchange at Google?</p> <p>18 A. I -- I believe I have. I --</p> <p>19 Q. Had you ever done any work with -- with</p> <p>20 respect to evaluating the Ad Ex -- Exchange or its</p> <p>21 features before?</p> <p>22 A. I'm trying to think through that</p> <p>23 question. I have worked as kind of a lead marketing</p> <p>24 partner in -- in my firm, my prior firm, and I'm</p> <p>25 trying to think of any of the work I did in that.</p>	<p style="text-align: right;">Page 49</p> <p>1 penalties or damages in a -- an advertising</p> <p>2 exchange, online advertising exchange market?</p> <p>3 A. Before this case, I have not done any</p> <p>4 quantification of damages or penalties in the online</p> <p>5 advertising exchange market.</p> <p>6 Q. Do you have any degrees in economics?</p> <p>7 A. I have an undergraduate degree in</p> <p>8 economics.</p> <p>9 Q. Okay. Do you have any higher degrees, a</p> <p>10 Ph.D.? Are you a doctor in economics?</p> <p>11 A. I'm not a doctor in economics, but I do</p> <p>12 have a master's in business administration with a</p> <p>13 concentration in finance, which is a subset of</p> <p>14 economics.</p> <p>15 Q. Yes. But you have no degrees in</p> <p>16 economics beyond a bachelor's where you presumably</p> <p>17 majored in economics?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I majored in economics as an undergrad</p> <p>20 and I have a master's in business administration</p> <p>21 with a concentration in financial economics.</p> <p>22 Q. Have you ever held yourself out as an</p> <p>23 economist in the private sector?</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 A. I work as an economic consultant for an</p>

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<p style="text-align: right;">Page 50</p> <p>1 economic consulting firm for the last almost 30</p> <p>2 years, 25, 30 years. So I've held myself out as</p> <p>3 someone who works in the economics field and applies</p> <p>4 my -- my -- my education, training, and experience</p> <p>5 in that field of economics.</p> <p>6 Q. Do you have any expertise in evaluating</p> <p>7 appropriate penalties when enforcement authorities</p> <p>8 seek them?</p> <p>9 MR. COLLIER: Objection; form.</p> <p>10 A. I've been involved in that before.</p> <p>11 Q. In what capacity?</p> <p>12 A. As an expert.</p> <p>13 Q. In what kind of a matter?</p> <p>14 MR. COLLIER: Mr. Andrien, I don't</p> <p>15 know what your answer is going to be. If this was a</p> <p>16 consulting engagement, I'd ask you not to disclose</p> <p>17 anything proprietary to the consulting engagement.</p> <p>18 And if it's a testifying engagement, don't disclose</p> <p>19 anything that would be in violation of whatever</p> <p>20 protective order may govern you in that matter.</p> <p>21 With that said, you can answer.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 A. So, for example, if you look at my -- my</p> <p>24 CV, I think the last --</p> <p>25 Q. Let's mark your CV, if we may.</p>	<p style="text-align: right;">Page 52</p> <p>1 as a testifying expert.</p> <p>2 Q. And what -- what portion of your work</p> <p>3 over the past five years, let's say, has consisted</p> <p>4 of testifying in litigation as a consultant?</p> <p>5 A. I've never done the math to determine</p> <p>6 what portion that would be.</p> <p>7 Q. Give us your best estimate. You've lived</p> <p>8 through it. Give us your best estimate?</p> <p>9 A. I'd be speculating as to a number. I can</p> <p>10 say the majority of that work --</p> <p>11 Q. Okay?</p> <p>12 A. -- would be in that area.</p> <p>13 Q. So the majority of your work, would that</p> <p>14 be true over the past ten years?</p> <p>15 A. It really depends on the year. So I've</p> <p>16 never -- as I said, I've never done that work. I</p> <p>17 do -- I -- I have a lot of different functions in my</p> <p>18 capacity at various jobs and so testifying as a</p> <p>19 witness, I would say actually I -- I don't believe</p> <p>20 it's the majority if I think about all the other</p> <p>21 obligations I have. And the things that I do, I</p> <p>22 actually think it would be on the lower end of my</p> <p>23 overall work.</p> <p>24 Q. Well, you originally said a moment ago</p> <p>25 you thought it was the majority of your work.</p>
<p style="text-align: right;">Page 51</p> <p>1 As a prelude to that, am I given to</p> <p>2 understand you have recently changed your</p> <p>3 employment?</p> <p>4 A. I've -- I've switched firms, yes.</p> <p>5 (Exhibit 3 was marked.)</p> <p>6 Q. Okay. Let's look at -- would you</p> <p>7 identify Andrien Exhibit 3 to your deposition? Is</p> <p>8 that your current CV?</p> <p>9 A. This is my most recent CV, yes.</p> <p>10 Q. And you now work for Resolution Economics</p> <p>11 in Austin. Right?</p> <p>12 A. Yes.</p> <p>13 Q. And what is the nature of that business?</p> <p>14 A. Economic consulting.</p> <p>15 Q. Does that include being retained to</p> <p>16 testify in litigation?</p> <p>17 A. It does.</p> <p>18 Q. Okay. And is that a consistent sequel,</p> <p>19 if you will, to the work that you did before that in</p> <p>20 your prior employment?</p> <p>21 A. Yes. Since -- for the last 25 years or</p> <p>22 more, I've been working as an economic consultant --</p> <p>23 Q. And --</p> <p>24 A. -- and -- and part of my work as an</p> <p>25 economic consultant has been to be engaged as a --</p>	<p style="text-align: right;">Page 53</p> <p>1 Right?</p> <p>2 A. I think it was the majority of my</p> <p>3 billable work.</p> <p>4 Q. Okay?</p> <p>5 A. But I do a lot of work that's</p> <p>6 nonbillable. I do -- I teach, for example.</p> <p>7 There's -- there's lots of things that I do in my</p> <p>8 capacity at the firm and as -- as a member of the</p> <p>9 faculty at University of Texas that -- that is</p> <p>10 outside the scope of -- of litigation consulting.</p> <p>11 Q. Okay. Back to the point. Your --</p> <p>12 your -- the majority of your paid work has been to</p> <p>13 testify -- prepare for and to testify -- testify and</p> <p>14 give opinions in litigation. Fair?</p> <p>15 A. No, because I get -- as I said, I get</p> <p>16 paid to be a -- a part of the faculty of UT and</p> <p>17 teach courses. I get paid as a consultant to do</p> <p>18 many things outside of work in litigation, to do</p> <p>19 engagements that are nonlitigation, to -- to manage</p> <p>20 and support the firm. There's lots of work I get</p> <p>21 paid to do. So my paid work, the -- the way you</p> <p>22 phrased your question, I would say that litigation</p> <p>23 work is a -- is a minority of my paid work.</p> <p>24 Q. Okay. So your position now is it's a</p> <p>25 minority of your paid work is in litigation-related</p>

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<p>1 work?</p> <p>2 A. That's been -- that's what I've been</p> <p>3 trying to say this whole time. I have -- I'm not</p> <p>4 trying to be inconsistent with my answers at all.</p> <p>5 The majority of the work that I get paid</p> <p>6 for from my employers, I would say, is</p> <p>7 nonlitigation-related.</p> <p>8 Q. Now, sir, are you a tenured or --</p> <p>9 you've -- you've talked about the fact that you're</p> <p>10 a -- you've taught some lectures at the University</p> <p>11 of Texas. Is that fair?</p> <p>12 MR. COLLIER: Objection; form.</p> <p>13 A. I'm -- I'm on the faculty of the finance</p> <p>14 department at the University of Texas.</p> <p>15 Q. Are you a tenured, or on tenure track,</p> <p>16 member of any university faculty -- or faculty?</p> <p>17 A. No, I'm a lecturer because I have a</p> <p>18 full-time job as a consultant.</p> <p>19 Q. Okay. Your full-time job is a</p> <p>20 consultant. You are an -- what's called an adjunct</p> <p>21 professor or you teach occasional courses. True?</p> <p>22 A. I routinely teach courses in finance at</p> <p>23 the McCombs School of Business at the University of</p> <p>24 Texas.</p> <p>25 Q. Okay.</p>	<p>1 Management Insights called Protecting an Asian</p> <p>2 Treasure and that is an academic publication that</p> <p>3 comes out of the Singapore Management University.</p> <p>4 Q. Any other peer-reviewed publications?</p> <p>5 A. You know, depending on how you defined</p> <p>6 peer-reviewed. All of -- all of my publications are</p> <p>7 reviewed -- reviewed by my peers or other</p> <p>8 professionals before they've been -- before they've</p> <p>9 been published.</p> <p>10 Q. You understand the difference between</p> <p>11 peer-reviewed and non peer-reviewed publications?</p> <p>12 A. If you have a definition you'd like to</p> <p>13 provide to me to answer that question, I will. But</p> <p>14 peer-reviewed can mean different things to different</p> <p>15 people. There's academic journals have a</p> <p>16 peer-review process and I've talked about the --</p> <p>17 the -- the publication I've done there. But I</p> <p>18 also -- these other publications have been reviewed</p> <p>19 by professional peers in the industry. And so I</p> <p>20 consider them in that aspect, peer-reviewed.</p> <p>21 Q. Okay. How about the first group. There</p> <p>22 are publications which only submit or publish</p> <p>23 peer-reviewed work --</p> <p>24 A. Okay.</p> <p>25 Q. -- articles. Right?</p>
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<p>1 A. And I've been doing that for several</p> <p>2 years now.</p> <p>3 Q. That's outside, as you say, of your full</p> <p>4 time employment as a consultant as you've described</p> <p>5 it. Right?</p> <p>6 A. That's correct.</p> <p>7 Q. Are you an academic researcher?</p> <p>8 A. I do not perform -- well, I have</p> <p>9 performed research and published in academic</p> <p>10 journals before so --</p> <p>11 And I've written a academic -- a chapter</p> <p>12 in an academic text took.</p> <p>13 Q. Have you ever published work in a</p> <p>14 peer-reviewed journal or other research publication?</p> <p>15 A. Yes.</p> <p>16 Q. And what -- what type of economic</p> <p>17 activity have you published?</p> <p>18 A. So if we go to my publications. I'll</p> <p>19 point you to -- so I wrote a chapter in a marketing</p> <p>20 textbook, the chapter that I wrote is called The</p> <p>21 Brand Imperative: Protecting Your Most Valuable</p> <p>22 Asset, and that was in a book called The Future of</p> <p>23 Branding.</p> <p>24 Q. Anything else?</p> <p>25 A. Yes. I wrote an article in Asian</p>	<p>1 How many -- how many such publications</p> <p>2 have you published in that are restricted to</p> <p>3 peer-reviewed work or articles?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. At least the two that I just mentioned</p> <p>6 and I believe some of the -- the work that I've</p> <p>7 published for various bar associations would then</p> <p>8 have to be peer-reviewed before they would be</p> <p>9 accepted into those.</p> <p>10 Q. The two that you have described are the</p> <p>11 two that come to mind. Is that right?</p> <p>12 MR. COLLIER: Objection; form.</p> <p>13 A. Those two, plus, by your definition, the</p> <p>14 others that I don't believe would've been allowed</p> <p>15 unless they were reviewed as well.</p> <p>16 Q. Have you ever been hire --</p> <p>17 MR. COLLIER: Mr. Gibbs, we've been</p> <p>18 going more than an hour, just when you reach a</p> <p>19 convenient stopping point, please.</p> <p>20 MR. GIBBS: You bet.</p> <p>21 Q. Have you ever been hired to analyze DTPA</p> <p>22 violations against any computer product developers?</p> <p>23 A. And just so I understand how we're</p> <p>24 defining "computer product developers," Google would</p> <p>25 fall into that category from your definition?</p>

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<p style="text-align: right;">Page 58</p> <p>1 Q. They would, yes.</p> <p>2 A. I have been.</p> <p>3 Q. And what -- what case or what connection?</p> <p>4 A. Let me look at my CV. The very last</p> <p>5 testifying entry on my CV is the State of Texas</p> <p>6 et al. versus Google, Inc.</p> <p>7 Q. Okay. Other than that occasion, have you</p> <p>8 been hired in any other matter to express any</p> <p>9 opinions?</p> <p>10 A. On -- well, I've -- that was a very</p> <p>11 open-ended question on other matters I've -- every</p> <p>12 matter I'm --</p> <p>13 Q. Such opinions. I'm talking about</p> <p>14 opinions violations, DTPA violations against</p> <p>15 computer product developers?</p> <p>16 A. I think that last case would be the only</p> <p>17 one that fits that description as you've -- as</p> <p>18 you've laid out.</p> <p>19 Q. Have you ever been retained to express</p> <p>20 opinions regarding DTPA violations of other kinds?</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 A. I don't recall these cases involve -- my</p> <p>23 other cases involving specifically deceptive trade</p> <p>24 practices. But I may have, I just don't recall as I</p> <p>25 sit here.</p>	<p style="text-align: right;">Page 60</p> <p>1 in a lot of cases over the course of my career.</p> <p>2 I -- as I sit here today, I don't recall any of the</p> <p>3 others being associated with DTPA penalties. But</p> <p>4 that's based on my recollection as I sit here today.</p> <p>5 Q. All right. How about have you ever been</p> <p>6 called on in a case to express opinions about civil</p> <p>7 penalties for multiple states -- under multiple</p> <p>8 states' DTPA statutes in one case?</p> <p>9 A. Again, as I sit here today, I don't</p> <p>10 recall a case that meets those characteristics. But</p> <p>11 that's based on my recollection as I sit here today.</p> <p>12 Q. And have you ever had your opinions</p> <p>13 stricken or disqualified by a court when you were</p> <p>14 designated as a potential expert witness?</p> <p>15 A. I've never had it done for any</p> <p>16 reliability issues. There was a case that I was on,</p> <p>17 an antitrust case, that was a per se antitrust case</p> <p>18 where I was asked to do a -- a rule of reason</p> <p>19 analysis. And that was -- that -- the judge</p> <p>20 determined that was not allowed in but not -- never</p> <p>21 said I did anything wrong in my analysis.</p> <p>22 Q. You were disqualified as not having</p> <p>23 appropriate expertise, the court ruled in that case.</p> <p>24 True?</p> <p>25 MR. COLLIER: Objection; form.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Okay. In any event, none come to mind</p> <p>2 out of the work assignments that you've described</p> <p>3 that you've undertaken in your career. Correct?</p> <p>4 A. I've undertaken a lot of cases in my</p> <p>5 career and -- and I don't recall specifically the --</p> <p>6 the various causes of action under each of those</p> <p>7 cases. So it's hard for me to answer that question.</p> <p>8 But none come to mind as I sit here right now.</p> <p>9 Q. Have you --</p> <p>10 MR. GIBBS: Let's -- let's take a</p> <p>11 break.</p> <p>12 MR. COLLIER: Okay.</p> <p>13 THE VIDEOGRAPHER: Going off the</p> <p>14 record. The time is 10:10.</p> <p>15 (Break.)</p> <p>16 THE VIDEOGRAPHER: Back on the</p> <p>17 record. The time is 10:29.</p> <p>18 Q. Mr. Andrien, have you ever been hired to</p> <p>19 express an opinion about DTPA state civil penalties</p> <p>20 before this case?</p> <p>21 A. Yes.</p> <p>22 Q. In what case?</p> <p>23 A. The state of Texas et al. v. Google, Inc.</p> <p>24 Q. Okay. Other than that case?</p> <p>25 A. As I answered before, I've been involved</p>	<p style="text-align: right;">Page 61</p> <p>1 A. That is not true.</p> <p>2 Q. He did not -- your opinions were not</p> <p>3 received or accepted by the court, they were</p> <p>4 excluded on the antitrust issue. True?</p> <p>5 A. Those opinions were excluded, but not --</p> <p>6 there is no finding that I wasn't qualified or</p> <p>7 finding that I did anything wrong in the case. What</p> <p>8 happened was it was a per se case. The judge made</p> <p>9 it clear he wasn't going to allow a -- a rule of</p> <p>10 reason analysis. So when the Daubert motion came,</p> <p>11 the other side made arguments. The side that I was</p> <p>12 working for didn't defend those arguments. And the</p> <p>13 judge ruled because they weren't defended, they</p> <p>14 couldn't allow me to testify.</p> <p>15 Q. The party that was adverse to you in that</p> <p>16 antitrust case in which you were tendered as a</p> <p>17 potential expert witness was the Department of</p> <p>18 Justice. Right?</p> <p>19 A. It was the United States, I believe.</p> <p>20 It was -- I -- I believe it was under the Department</p> <p>21 of Justice.</p> <p>22 Q. And in that case, that antitrust case,</p> <p>23 the Department of Justice challenged on multiple</p> <p>24 grounds your qualifications as to serve as an expert</p> <p>25 on any antitrust issues. Right?</p>

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<p>1 A. The Department of Justice challenged</p> <p>2 those, as I get challenged on virtually every case</p> <p>3 I'm on. The judge never ruled that those challenges</p> <p>4 were -- were right. The judge just ruled saying</p> <p>5 these weren't defended and so I'm not going to allow</p> <p>6 them to testify. And the reason it wasn't defended</p> <p>7 is because the judge made it clear to counsel that</p> <p>8 he wasn't going to allow a rule of reason report in</p> <p>9 a per se antitrust case.</p> <p>10 Q. The Department of Justice challenged you</p> <p>11 on multiple grounds including number one, that you</p> <p>12 were not a economist they said. Right?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. That was one of their claims which again</p> <p>15 I believe is demonstrably false.</p> <p>16 Q. The Department of Justice said you had no</p> <p>17 scientific, technical, or other specialized</p> <p>18 knowledge that would help the jury in that case.</p> <p>19 Right?</p> <p>20 A. Yeah, that was their claim. As I said</p> <p>21 people make claims in every case I'm on like that.</p> <p>22 Q. The Department of --</p> <p>23 A. May I finish?</p> <p>24 Q. You sure may.</p> <p>25 A. They make claims in every case I'm on</p>	<p>1 litigation only and, therefore, not peer-reviewed.</p> <p>2 True?</p> <p>3 MR. COLLIER: Objection; form.</p> <p>4 A. Again, I don't recall the -- the -- the</p> <p>5 specific claims that the DOJ alleged in that case.</p> <p>6 Like every case I'm on, the other side alleges</p> <p>7 reasons why they don't believe a judge should --</p> <p>8 virtually every case -- should allow my testimony.</p> <p>9 And the judge did not agree or -- or confirm any of</p> <p>10 those allegations --</p> <p>11 Q. Have you --</p> <p>12 A. -- in this case.</p> <p>13 Q. -- prepared -- or strike that.</p> <p>14 Have you prepared and been published in</p> <p>15 any peer-reviewed article a description of how to</p> <p>16 calculate civil penalties in a DTPA case?</p> <p>17 A. I have not written a -- an article on how</p> <p>18 to calculate civil penalties on a DTPA case.</p> <p>19 Q. How about civil penalties under the state</p> <p>20 antitrust statutes or federal antitrust statutes?</p> <p>21 A. I don't believe any of the articles I've</p> <p>22 written have addressed how to quantify penalties</p> <p>23 under the state antitrust or federal antitrust laws.</p> <p>24 Q. You are relying on other experts in your</p> <p>25 opinions, as your opinions relate to the sums you</p>
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<p>1 like that. I believe those claims were demonstrably</p> <p>2 false. The judge never ruled that those claims were</p> <p>3 correct.</p> <p>4 Q. The -- the Justice Department also</p> <p>5 objected to you on the grounds that you had no</p> <p>6 peer-reviewed methodology supporting your proffered</p> <p>7 opinions there. True?</p> <p>8 A. I don't recall specifically whether that</p> <p>9 was part of the claim. But I -- I remember the case</p> <p>10 and I did have a peer-reviewed methodology. So</p> <p>11 because they claimed it doesn't make it true.</p> <p>12 Q. And they also objected to you on the</p> <p>13 grounds that your methodology was never tested in</p> <p>14 any outside litigation that under -- under --</p> <p>15 underscored your opinions there. Right?</p> <p>16 A. I --</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. I would have to go back and read the --</p> <p>19 the -- the motion by the -- the plaintiffs in that</p> <p>20 case. But, again, I am confident the judge did not</p> <p>21 rule that those -- those allegations were true. And</p> <p>22 I'm confident that they are not true.</p> <p>23 Q. And they also -- the Department of</p> <p>24 Justice also objected that your performed --</p> <p>25 performed methodology for litigation was for that</p>	<p>1 say should be awarded as civil penalties. True?</p> <p>2 MR. COLLIER: Objection; form.</p> <p>3 A. Would you, please, repeat the question?</p> <p>4 Q. You rely upon other third-party expert</p> <p>5 witnesses in issuing your opinions regarding the</p> <p>6 amount of civil penalties that you recommend here?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. That is correct. I reference other</p> <p>9 experts that are involved in this case.</p> <p>10 Q. That's Messrs. Weinberg, Chandler, and</p> <p>11 Gans?</p> <p>12 A. I believe I've also referenced Dr. Ruden</p> <p>13 in my case -- in my report. So it would be</p> <p>14 Drs. Weinberg, Gans, Chandler, and Ruden, I believe</p> <p>15 are the...</p> <p>16 Q. And who -- who selected -- or why did you</p> <p>17 select those specific witnesses to rely upon in</p> <p>18 forming your opinions about the amount of civil</p> <p>19 penalties to recommend?</p> <p>20 A. It was my understanding that those</p> <p>21 doctors were addressing various issues in this case,</p> <p>22 and the issues that they were addressing were --</p> <p>23 provided pertinent information for me to consider in</p> <p>24 the work that I was addressing.</p> <p>25 Q. Did you assume their opinions were</p>

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<p style="text-align: right;">Page 66</p> <p>1 correct for the purpose of your own analysis?</p> <p>2 A. I have assumed that their opinions are</p> <p>3 correct.</p> <p>4 Q. Why did you assume that?</p> <p>5 MR. COLLIER: Objection; form.</p> <p>6 A. Because they were experts hired in this</p> <p>7 case who have done work and analyses based on their</p> <p>8 expertise that I did not perform in this case. And</p> <p>9 like almost every case I'm on, it's useful and</p> <p>10 helpful to rely upon the expertise of others when</p> <p>11 necessary.</p> <p>12 Q. You anticipated my next question. You</p> <p>13 just indicated they -- they did an analysis that you</p> <p>14 were not called upon to do. Right?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. I -- I -- from my understanding of -- of</p> <p>17 their reports, I believe they were addressing issues</p> <p>18 different to the issues that I was addressing.</p> <p>19 Q. Okay. Did you perform any analysis</p> <p>20 yourself to determine whether those experts and</p> <p>21 their reports you relied upon were worthy of</p> <p>22 reliance?</p> <p>23 MR. COLLIER: Objection; form.</p> <p>24 A. I understood how I was relying on them.</p> <p>25 I understood the base -- I've read the reports, so I</p>	<p style="text-align: right;">Page 68</p> <p>1 Google experts have put forth, specifically</p> <p>2 Drs. Wiggins and Skinner. And when they presented</p> <p>3 information that I thought was something I should</p> <p>4 consider, I did. When they -- but I looked and</p> <p>5 analyzed whether I agreed with what they were saying</p> <p>6 or disagreed with what they were saying.</p> <p>7 Q. So you performed -- you -- you made</p> <p>8 judgments in calculating your numbers about which</p> <p>9 side's experts were correct or incorrect on</p> <p>10 liability?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. I've told you in my work I've assumed</p> <p>13 liability in this case. So I didn't have to apply</p> <p>14 that type of judgment in assuming liability.</p> <p>15 Q. And for that reason you didn't do that?</p> <p>16 A. I didn't do what?</p> <p>17 Q. You didn't do any independent evaluation.</p> <p>18 Right, sir?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. I didn't do any independent evaluation of</p> <p>21 what?</p> <p>22 Q. Of the merits of the underlying facts and</p> <p>23 support -- that supported -- that supported</p> <p>24 Weinberg, Chandler, or Gans, for example?</p> <p>25 MR. COLLIER: Objection; form.</p>
<p style="text-align: right;">Page 67</p> <p>1 did an analysis and read the reports to understand</p> <p>2 how they concluded what they concluded.</p> <p>3 And based on my research in this case, my</p> <p>4 understanding of the record in this case, my</p> <p>5 education, training, and experience, and upon</p> <p>6 reading those reports, I felt that it was</p> <p>7 appropriate for me to rely upon them.</p> <p>8 Q. Okay. Even though you didn't conduct any</p> <p>9 independent analysis of the investigations or</p> <p>10 analysis they did in their respective reports.</p> <p>11 True?</p> <p>12 MR. COLLIER: Objection; form.</p> <p>13 A. I don't agree with that characterization.</p> <p>14 I just told you that I've read their reports. And</p> <p>15 when I read the reports, that is an analysis and a</p> <p>16 review that I bring my education, training, and</p> <p>17 experience to bear when I look at those opinions and</p> <p>18 determine whether or not they seem well-supported,</p> <p>19 they're based on logical -- you know, logical</p> <p>20 workflows, et cetera.</p> <p>21 Q. Did you consider relying on any of</p> <p>22 Google's experts in arriving at your numbers that</p> <p>23 you were going to recommend as civil penalties?</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 A. Well, I've looked at certain reports that</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. You didn't conduct your own independent</p> <p>2 evaluation of their antitrust liability conclusions?</p> <p>3 A. And, again, I disagree with that</p> <p>4 characterization. I told you I've read the reports,</p> <p>5 I brought my training, education, and experience, to</p> <p>6 -- to bear when I read those reports.</p> <p>7 I -- I've also reviewed a plethora of</p> <p>8 documents in this case. And so I have an</p> <p>9 understanding based on all the information I've seen</p> <p>10 in this case, and I did determine -- or looked to</p> <p>11 see if anything that I was relying upon was</p> <p>12 inconsistent with what I've seen in this case.</p> <p>13 So I do believe that's an independent</p> <p>14 analysis.</p> <p>15 Q. How many depositions were taken in this</p> <p>16 case?</p> <p>17 A. I have not counted the number of</p> <p>18 depositions.</p> <p>19 Q. How many depositions have you read that</p> <p>20 were taken in this case?</p> <p>21 A. I have not counted that either.</p> <p>22 Q. Well, haven't you listed the things that</p> <p>23 you relied upon in arriving at your opinions in this</p> <p>24 case?</p> <p>25 A. I've listed what I've relied upon, yes.</p>

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<p>1 Q. And how many depositions have you relied 2 upon in this case? 3 A. (Pause.) 4 There's six that I've relied upon. 5 Q. Which -- where does that appear in 6 your -- in your report? 7 A. On my initial report it is Appendix B, 8 the materials relied upon list. 9 Q. And how many depositions did you indicate 10 there? 11 A. Two depositions, and the one, two -- 12 three declarations. 13 Q. Okay. I asked depositions. You 14 listed -- you disclosed two depositions that you 15 relied upon in total in arriving at your original 16 report. True? 17 A. In my initial report, yes. In my -- 18 Q. That was my -- 19 A. -- in my -- 20 Q. -- (unintelligible). 21 A. -- rebuttal report there is four 22 additional depositions. 23 Q. Okay. Well, I'm -- I'm now looking at 24 the -- the basis upon which you arrived at your 25 initial report.</p>	<p>1 that your: Analysis, evaluation, and opinions 2 discussed in this report are based on certain 3 assumptions, including the assumption that Google is 4 found liable for the alleged misconduct. No 5 opinions on liability are expressed herein. 6 Do you see that? 7 A. I do. 8 Q. And do you -- is that an accurate 9 representation to the Court? 10 A. I believe that is an accurate 11 representation to the Court. 12 Q. And do you intend to limit your testimony 13 in this case consistent with that representation to 14 the Court? 15 MR. COLLIER: Objection; form. 16 A. I intend to limit the testimony to the 17 opinions that I have listed in my report and -- 18 without exception -- 19 Q. And -- 20 A. -- and that support -- that -- that 21 underlies those opinions. 22 Q. -- and therefore you intend to honor your 23 representation that you are expressing no opinions 24 on liability in this report. Right? 25 A. I was not addressing liability in my</p>
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<p>1 How did you pick those two depositions? 2 A. These are the ones that were relied upon. 3 So it's not necessarily the -- the -- the list of 4 depositions that were reviewed -- the -- the list of 5 depositions that were relied upon. 6 And I determined that these two 7 depositions addressed issues that I was addressing 8 in my report, and I relied upon them because of 9 that. 10 Q. And what were those -- what were those 11 issues that you relied upon in the two depositions 12 that you cited? 13 A. I would have to go -- well, let me take a 14 look and I'll... 15 Q. Can you recall, as you sit here, how you 16 picked those two to rely upon? 17 A. I believe I just -- I tried to address 18 how I got to why I relied upon them. I chose them 19 because they addressed issues that I relied upon 20 in -- in coming to my conclusions and -- and as the 21 basis for my conclusions. 22 So that's how they were chosen. They 23 said things that were relevant to my analysis. 24 Q. Would you look with me at Page 3 of your 25 original report. Paragraph 8 you indicate there</p>	<p>1 report. To the extent that my opinions that I have 2 addressed can be used in that way, it's -- it's not 3 for me to determine. I am here to opine and -- 4 and -- and support and testify on the opinions that 5 I have expressed in both of these reports, and -- 6 and that's what I intend to do. 7 Q. On Note 4 at the bottom of that page you 8 represent to the Court that: The plaintiff states 9 have also brought antitrust claims against Google in 10 this matter. 11 A. Yes. 12 Q. Do you see that? 13 You go on to say "however, my opinions 14 are limited to those claims related to deceptive 15 trade practices," that statute. Right? 16 A. That's what it says, yes. 17 Q. Okay. And do you intend to be bound by 18 that representation of the Court? 19 MR. COLLIER: Objection; form. 20 A. As I said, I intend to opine on the -- 21 to -- to testify in the opinions that I've listed in 22 my report without exception -- 23 Q. And -- 24 A. -- and to the support that I provide for 25 those opinions.</p>

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<p>1 Q. -- and do you intend to honor the</p> <p>2 representation that your opinions in this report are</p> <p>3 limited to those claims related to deceptive trade</p> <p>4 practices only?</p> <p>5 MR. COLLIER: Objection; form.</p> <p>6 A. My opinions on how I derived them were</p> <p>7 based on the deceptive trade practices. If they may</p> <p>8 be used in ways other than that. That is not for me</p> <p>9 to decide. I'm here to testify on the opinions that</p> <p>10 I've put forth without exception.</p> <p>11 And to the extent they address or can</p> <p>12 address things that -- that meet the characteristics</p> <p>13 that you say, then they can. And to the extent they</p> <p>14 can't, then they can't.</p> <p>15 But I'm here to testify to the opinions</p> <p>16 that I've put forth in my report.</p> <p>17 Q. You -- you indicate that you rely upon</p> <p>18 source material cited in your report. Right, sir?</p> <p>19 A. Are you -- are you pointing to a</p> <p>20 specific --</p> <p>21 Q. No. You -- you rely upon source material</p> <p>22 in this report in support of your opinions. Right?</p> <p>23 A. I -- I rely upon --</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 THE WITNESS: I'm sorry.</p>	<p>1 A. I do.</p> <p>2 Q. And then you list under that the conduct</p> <p>3 that your -- that underlies your opinions with</p> <p>4 respect to the amount of penalties you're</p> <p>5 recommending. Right?</p> <p>6 MR. COLLIER: Objection; form.</p> <p>7 A. Can you point me to what you're -- to</p> <p>8 what you're speaking about?</p> <p>9 Q. Yes. The small I: The alleged</p> <p>10 misconduct provides Google with direct and indirect</p> <p>11 financial benefits.</p> <p>12 Right, sir?</p> <p>13 A. Yes.</p> <p>14 Q. And secondly, you indicate: I'm unable</p> <p>15 to determine Google's total incremental benefits</p> <p>16 from the misconduct because Google has not produced</p> <p>17 information sufficient to determine even the direct</p> <p>18 benefits from the alleged misconduct.</p> <p>19 Right, sir? That's what you say. Right?</p> <p>20 A. It says: And then much less the indirect</p> <p>21 benefits from the alleged misconduct.</p> <p>22 Q. Right.</p> <p>23 And then you say: Additionally, the</p> <p>24 benefits from both the alleged deceptive trade</p> <p>25 practices misconduct and the separate antitrust</p>
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<p>1 A. I rely upon documents -- I rely upon all</p> <p>2 the materials that are listed in Appendix B of the</p> <p>3 first report and Appendix 2 of my rebuttal report.</p> <p>4 Q. Let's look at Page 6 of your report.</p> <p>5 A. Okay.</p> <p>6 Q. Now, you told us a moment ago that one of</p> <p>7 your three factors that you were relying upon was</p> <p>8 deterrence. Do you recall that?</p> <p>9 A. I think --</p> <p>10 MR. COLLIER: Objection; form.</p> <p>11 A. -- specifically what we agreed to was I</p> <p>12 addressed the amount necessary to deter future</p> <p>13 misconduct.</p> <p>14 Q. Yes, sir.</p> <p>15 And then back to Page 6, you say at</p> <p>16 Paragraph F there: To deter Google from continuing</p> <p>17 its misconduct, the penalty must eliminate Google's</p> <p>18 financial incentive to engage in the misconduct.</p> <p>19 Right, sir?</p> <p>20 A. I do say that.</p> <p>21 Q. "At minimum, this would involve</p> <p>22 penalizing Google for the total incremental</p> <p>23 benefits, including the future benefits, from the</p> <p>24 alleged misconduct."</p> <p>25 Right?</p>	<p>1 conduct alleged in this case play a role within an</p> <p>2 overall scheme to dominate the display advertising</p> <p>3 industry.</p> <p>4 You see that?</p> <p>5 A. I do.</p> <p>6 Q. So you're indicating here that the judge</p> <p>7 or fact-finder should consider in assessing</p> <p>8 penalties both the alleged deceptive trade practices</p> <p>9 misconduct and the separate antitrust conduct</p> <p>10 alleged in the case. Right?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. I'm -- I am -- what I'm saying here is</p> <p>13 based on this -- the alleged deceptive trade</p> <p>14 practices misconduct, when -- when you -- when you</p> <p>15 couple that with the -- the separate antitrust</p> <p>16 conduct alleged in this case, it -- they play a role</p> <p>17 in Google's overall scheme to dominate the display</p> <p>18 advertising market. I'm putting this into context,</p> <p>19 that -- that Google is clearly working to dominate</p> <p>20 the overall display market and that's borne out from</p> <p>21 the -- the -- the work that I've done in this case.</p> <p>22 Whether or not they're -- they're found</p> <p>23 liable for antitrust conduct or not is -- is not</p> <p>24 dispositive of my conclusion that they are working</p> <p>25 to dominate that market.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. So you've arrived at an independent 2 conclusion that both antitrust and DTPA misconduct 3 is to be considered in connection with your opinions 4 of the amount of civil penalties? 5 MR. COLLIER: Objection; form. 6 A. I don't believe that's what it says. I 7 believe you're -- you're misinterpreting that. 8 Q. Okay. So you don't intend, by saying the 9 benefits from both the alleged deceptive trade 10 practices misconduct and separate antitrust conduct 11 both play a role in the overall -- in an overall 12 scheme to dominate. That's not to be considered in 13 support of your total recommended deceptive trade 14 practices penalties? 15 A. As I -- 16 MR. COLLIER: Objection -- again, 17 just one moment before you answer. 18 THE WITNESS: Okay. 19 MR. COLLIER: Objection; form. 20 You may answer. 21 A. Excuse me. Just -- would you please 22 repeat the question? 23 Q. Yes, sir. 24 You make the statement that both the 25 alleged deceptive trade practices misconduct and the</p>	<p style="text-align: right;">Page 80</p> <p>1 consider how these things are working in the 2 snowball effect that this conduct has on Google's 3 overall business. It -- it demonstrates and leads 4 to the conclusion that they are -- they are -- have 5 a scheme to dominate this display advertising 6 industry and that's what I'm getting at. 7 Q. You've not conducted any independent 8 study to determine whether under the penalties that 9 may be available to a party for violation of the 10 state antitrust statutes are -- are met on this 11 record. True? 12 A. I didn't understand your question -- 13 Q. You have not conducted any -- 14 A. I feel like when I'm talking, I didn't 15 get to finish what I was saying before you started 16 your question. I'm just trying to just -- just 17 trying to get my -- my answer or -- or question out. 18 Q. Well, finish the question, then. 19 A. I -- I -- I believe we just talked over 20 one another at the end and I'm just trying to -- 21 just trying to avoid that just so we can be clear 22 and help the court reporter. 23 Q. The -- my question is simply this. With 24 respect to the -- your assertion in your report at 25 Page 6 that the alleged deceptive trade practices,</p>
<p style="text-align: right;">Page 79</p> <p>1 separate antitrust conduct alleged in this case play 2 a role within an overall scheme to dominate the 3 display advertising industry. Have I read that 4 correctly? 5 A. You have read that correctly, yes. 6 Q. Okay. So you're suggesting that the 7 Court or fact-finder, that both of those areas of 8 misconduct should be considered as part of an 9 overall scheme by Google to dominate the display 10 advertising industry. Right? 11 A. So I -- I don't agree with that last 12 characterization. What I'm -- what I'm saying in 13 this report and what I'm saying in that particular 14 spot is I'm assuming liability. I understand that 15 the alleged deceptive misconduct in this case, that 16 the -- the plaintiffs are also alleging that that 17 has reached -- that -- that has provided Google with 18 monopoly power in certain aspects of this market. 19 That's part of their claim. 20 But in terms of the penalties that I'm 21 addressing, the penalties I'm addressing are 22 associated with the DTPA and are independent of the 23 antitrust claims. This is talking about that this 24 conduct is leading to other conduct that is alleged 25 in this case. But there's an overall scheme if you</p>	<p style="text-align: right;">Page 81</p> <p>1 misconduct, and the separate antitrust conduct 2 alleged in this case play a role within an overall 3 scheme to dominate the display advertising industry. 4 Okay. You have that before you. Right? 5 A. I do. 6 MR. COLLIER: Objection; form. 7 A. I do. 8 Q. Now, my question is, you've not, as we've 9 established, conducted any analysis that's reflected 10 in your report of the -- of the antitrust conduct 11 under the antitrust penalty provisions. True? 12 MR. COLLIER: Objection; form. 13 A. I -- I don't understand your question and 14 how to answer your question. 15 What I've done -- and then maybe that's 16 the best way I can answer your question is to tell 17 you what I've done. What I've done is to determine 18 a penalty associated with the deceptive trade 19 practices violations that Google engaged in within 20 the lens of the three factors I was asked to 21 consider. I understand the jury might consider 22 other factors. 23 But based on that, I have an 24 understanding of Google's -- of the States; excuse 25 me -- claim that Google has a -- has monopolistic</p>

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<p style="text-align: right;">Page 82</p> <p>1 power in this market as a result of the misconduct. 2 I understand that. I've looked at that. I 3 understand what Dr. Gans has said about that. 4 My -- my penalty doesn't rely on Google 5 being found liable for those claims because I'm 6 addressing the DTPA claims, not the antitrust claims 7 specifically. To the extent that my work and my 8 opinions are -- somehow relate to that, then they 9 do. To the extent they don't, they don't. 10 But that this is -- this in section -- on 11 Page 6 the section F2, what I'm saying here is that 12 when -- when you -- when I've reviewed Google's 13 conduct and I've looked at all the -- the -- the 14 information that was available to me in this case, 15 Google's conduct is clearly shown that they have an 16 intention and -- and a desire to dominate this 17 market and they have improved their -- enhanced 18 their position through this deceptive conduct. 19 And -- and if -- if it's reached an anticompetitive 20 level as -- as Dr. Gans said, that's even more 21 demonstrative of their enhanced power and their -- 22 their enhanced position. 23 But whether they've reached that level or 24 not is not part of my calculation, part of my 25 penalty assessment.</p>	<p style="text-align: right;">Page 84</p> <p>1 it that way. Right? 2 A. While -- while -- while I agree that 3 would absolutely reinforce, it doesn't need to -- 4 to for my support and my range to be appropriate. I 5 don't -- I don't rely upon it solely. It's just -- 6 it is just a factor that if that happens, then 7 it's -- 8 Q. Clear as a bell? 9 A. -- clear as a bell. And I think it's 10 clear as a bell, anyway, from what I've said. So I 11 think it's -- what -- what I have -- what I've 12 reached -- the conclusions that I've reached I 13 believe are clear as a bell. They're reliable. 14 They are based on the -- on the information that I 15 reviewed and the analysis that I've performed and 16 I -- I -- I think it's clear as a bell -- as a bell 17 anyways (sic) that there's been this snowball effect 18 from their misconduct, their deceptive misconduct. 19 Q. And if someone -- if the jury or a court 20 determines that there is no antitrust misconduct 21 liability violations, you're not going to come off 22 your 7 to \$20 billion numbers a dime. True? 23 MR. COLLIER: Objection; form. 24 A. I believe my seven -- let's just get the 25 exact numbers here so we can then --</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. If they are found liable, do you -- 2 you've offered, as further support for the numbers 3 that you have cited, the antitrust conduct. Right? 4 MR. COLLIER: Objection; form. 5 A. If they are found liable for the 6 antitrust conduct, then that just shows how much 7 this -- I mean, that -- that just shows the snowball 8 effect from this deceptive conduct has reached 9 just a -- an unarguable level that this is -- this 10 has been -- extraordinarily valuable to Google. 11 I look at it -- that is supportive that 12 happens. That is just support to the level that 13 just makes this very easy and understandable to -- 14 to -- to conclude what I've concluded. Without 15 that, I believe there's support and information in 16 the record that shows that either way, there's been 17 a snowball effect that has enhanced their position 18 that have caused others in the -- in the market harm 19 and Google has benefitted from that, not just in 20 their AdTech stack, but throughout their 21 organization. 22 Q. So if the -- if the fact-finder finds 23 that Google committed the antitrust conduct, that 24 supports, by your description, the range of 7 to 25 \$20 billion in penalties? Reinforces it. Let's put</p>	<p style="text-align: right;">Page 85</p> <p>1 (Pause.) 2 I think it's 7.2 -- 7.27 and 21.81. 3 Q. Okay. So you -- if they are found 4 liable, then that makes it clear as a bell to you 5 that that was misconduct that would support your -- 6 your -- 7 to -- 7-plus to 22 approximately range of 7 penalties. Right? 8 A. I think either way it's clear as a bell 9 that it's important whether they're found liable or 10 not. If they're found liable, I think that's 11 just -- 12 Q. Laniappe? 13 A. It's just additional support. 14 Q. Okay. So you didn't need it but you 15 wanted to put it in there because it would serve to 16 increase the justification for your -- your numbers. 17 Right? 18 MR. COLLIER: Objection; form. 19 A. I don't believe it -- it increases it. 20 I'm just saying that this is part of the case and 21 I'm assuming liability. If that's true. 22 Q. But they only get those penalties if they 23 find a DTPA violation. Right, sir? 24 MR. COLLIER: Objection; form. 25 Q. According to your testimony?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. My testimony is based on the -- my scope 2 of work in this case, I've determined an appropriate 3 penalty for Google for the violations of the 4 deceptive conduct that it's engaged in relative to 5 the different programs that it -- that it -- that 6 were addressed -- we're addressing. If they're 7 found guilty for any or all of those misconducts, I 8 believe the appropriate penalty falls within the 9 range that I've calculated regardless of whether or 10 not they are found additionally guilty of antitrust 11 violations. 12 Q. And so without the antitrust liability 13 finding, you don't come off your 7 to 22 billion. 14 Right? 15 A. That's correct. 16 Q. And if -- if you have one -- only one 17 DTPA finding of misconduct, you still stay with your 18 7 to 22 billion. Right? 19 MR. COLLIER: Objection; form. 20 A. Yeah, the 7.27 to 21.81. 21 But, yeah, because of the number of 22 violation counts. And I can kind of explain this 23 graphically and I -- I think I did that in my -- my 24 rebuttal report. Because the violation counts are 25 so massive in this case, and the benefits to Google</p>	<p style="text-align: right;">Page 88</p> <p>1 [REDACTED], I have the math 2 in my report to be able to -- for the jury to be 3 able to answer what the appropriate penalty is. 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED]. 8 Q. So you've anticipated another question. 9 Let's assume that you keep cutting -- the fact 10 finder keeps cutting in half the number of 11 violations, okay, assume that. 12 A. Okay. 13 MR. COLLIER: Objection; form. 14 Q. And you keep halving it. That is 15 H-A-L-V-I-N-G, halving it. And you wind up getting 16 down to [REDACTED]. Now at that point in 17 time are you coming off your 7 to \$20 billion 18 figure? 19 A. Yes. But is that -- at that point I have 20 the math in my report to be able to calculate what 21 the appropriate penalty would be. 22 Q. Yeah, where is that math? What is that 23 math? 24 A. Sure. Let me -- let me show you. 25 So if we go to Figure 2 of my rebuttal</p>
<p style="text-align: right;">Page 87</p> <p>1 are really large in this case. Yes, you would -- 2 you would get to my range of appropriate penalties 3 with the number of violation counts of either one or 4 all of the misconduct. 5 Q. Okay. Even if one of the -- if you only 6 had a finding that one of those alleged DTPA 7 violations occurred and it occurred during a limited 8 period of time, your -- you stick with and you won't 9 come off of your 7 to \$22 billion number. Right? 10 MR. COLLIER: Objection; form. 11 A. Let -- let me maybe just be as clear as I 12 can on this. All of the numbers that anybody has 13 put forth in terms of violation counts in this case, 14 what I think are the appropriate numbers, I put in 15 my reports. I think they're appropriate for -- for 16 every independent conduct as well as the total 17 conduct. I've calculated for -- for all of it. 18 I've looked at Dr. Wiggins' report. I've 19 looked at his independent calculations and his -- 20 his aggregate quantification. Any range in there 21 I -- I believe we -- the penalty reaches the point 22 where we're going to be within my range. 23 Now, if there is a lower -- if it's found 24 that there's just five independent -- like just five 25 violations [REDACTED],</p>	<p style="text-align: right;">Page 89</p> <p>1 report. 2 Q. You got a page on that? 3 A. It's Page 16. 4 Q. All right? 5 A. So if we look at this -- and -- and I 6 think the scaling of this picture is such that it 7 actually curves this line when I -- I view this 8 line -- this curved portion is actually a straight 9 line from zero to that point. And so you can think 10 of this as a straight line from here to here, and 11 that would go up. So if -- if for every violation 12 Google committed, they would receive the maximum 13 penalties. They would go a straight line from 0 all 14 the way up to, as I calculated, [REDACTED] 15 based on the number of violation counts. The slope 16 of that line indicates where this point, this -- 17 this kind of point where it gets you into my 18 violation range occurs, that slope happens at 19 roughly I think it's [REDACTED]. 20 So if you get [REDACTED], 21 we're in the -- the range of my damages. If you're 22 below that, then you would quantify what the 23 appropriate penalty would be based on the slope of 24 that line. Which I've given because of the -- the 25 00 to [REDACTED] divided by the number of</p>

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<p style="text-align: right;">Page 90</p> <p>1 violation counts that I have. So that's easy, 2 simple math that the jury could apply to get to 3 whatever violation count they come up with, what the 4 appropriate penalty is. 5 But where -- where we are on this part of 6 violation counts are so far out, they're so large, 7 that we're -- there's not anyone in this case that 8 has put forth kind of a violation count that would 9 get us off of my range of where an appropriate 10 penalty would be that would serve as an effective 11 deterrent to Google. 12 Q. Your Figure 2 is in your rebuttal report, 13 isn't it? 14 A. It is, yes. 15 Q. Your Figure 2 and that explanation 16 appears nowhere in your original report, does it? 17 A. Well, I have similar explanation in my -- 18 maybe not as detailed, but I do -- I do address this 19 in my initial report and this is trying to clarify 20 it further. 21 Q. You don't include in your initial report 22 any suggestion that you can calculate or that your 23 break point for your numbers appear -- [REDACTED] 24 [REDACTED] 25 MR. COLLIER: Objection; form.</p>	<p style="text-align: right;">Page 92</p> <p>1 math is -- is there to do it very simply. And we 2 are -- we are so far beyond that point that I -- I 3 don't think it was necessary for me to calculate 4 specifically. But -- but that's about where it 5 would fall. And I've given the information to do 6 that math. I'm telling you it's a straight line. 7 And I'm telling you any point, any violation count 8 that -- that the jury comes to, they're going to be 9 able to use my work to help determine what an 10 appropriate penalty should be. And -- and if it's 11 over -- [REDACTED] 12 [REDACTED], I believe we are squarely 13 within my range. 14 Q. And what you've just described is a 15 situation where you say under your theory of 16 calculating civil penalties, because the -- the 17 number of violations are so big that there are not 18 going to be a violation limitation that is going to 19 be sufficient to change your range of penalties 20 below the 7 to 22 billion range. Right? 21 MR. COLLIER: Objection; form. 22 A. I have not seen any -- any evidence in 23 this case from either party that would suggest that 24 the violation counts are sufficiently low where we 25 would be outside of -- of my violation count. That</p>
<p style="text-align: right;">Page 91</p> <p>1 A. I -- I disagree. I've -- I've given the 2 [REDACTED] number. And so the slope of 3 that line is easily calculable given that number and 4 the number of violations. 5 So it is there, I talk about that number, 6 I talk about what it represents, and I talk about 7 what the appropriate range is given Google's -- 8 given the -- the lens that I was asked to look for. 9 And so I believe all the information is there. It 10 seemed that Dr. Wiggins was mischaracterizing what I 11 was doing, so I tried to explain it more fulsomely 12 in my rebuttal report which I believe I have. 13 Q. No. 1, the two figures that you put in 14 your reply after Wiggins attacked you at Pages 15 15 and 16 in your rebuttal report, appear nowhere in 16 your original report. True? 17 MR. COLLIER: Objection; form. 18 A. I do not -- that is true, I do not 19 include those figures. These are -- these are 20 figures that I've added to my rebuttal to -- to 21 further describe and -- and demonstrate what I've 22 done and -- and why I'm right. 23 Q. Did you put the [REDACTED] 24 [REDACTED] in your rebuttal report? 25 A. I -- I didn't put that in there but the</p>	<p style="text-align: right;">Page 93</p> <p>1 would still serve as an effective deterrent that 2 would meet its goal as -- as penalizing Google 3 for -- for the misconduct at issue in this case. 4 Q. Is that another way of saying that under 5 your theory -- your theory is a nonlinear theory of 6 calculation on this record of these penalties? 7 MR. COLLIER: Objection; form. 8 A. My theory, non -- nonlinear, the math is, 9 I believe, actually -- it's nonlinear and that for 10 every violation you don't just -- just multiply 11 times the -- the per violation penalties that I've 12 given. Because as you do that, you're going to get 13 into a situation where you're not serving as an 14 appropriate deterrent which I believe is described 15 in my initial report. And so it's nonlinear in that 16 sense. 17 Q. It's nonlinear. And you mean by 18 nonlinear that if you reduce the number of 19 violations, you're not going to reduce the total 7 20 to \$20 billion because you've decided that amount or 21 that range is necessary to deter Google. Right? 22 MR. COLLIER: Objection; form. 23 A. I've determined based on my analysis, 24 based on all of the documents that I've looked at, 25 all the financials I've looked at, my education,</p>

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<p style="text-align: right;">Page 94</p> <p>1 training, and experience, when I've analyzed the</p> <p>2 factors that I was asked to analyze to come up with</p> <p>3 a penalty that Google should pay for violating and</p> <p>4 deceiving its -- the constituents within the -- the</p> <p>5 AdTech Stack, that if you -- if you think about the</p> <p>6 benefits to Google, the size of the benefits to</p> <p>7 Google, the snowball effect that all of these</p> <p>8 violations have had on Google's operations, and how</p> <p>9 it's helped Google become the massive company it is</p> <p>10 today that you would have to -- you would have to</p> <p>11 punish Google or apply a penalty that would be large</p> <p>12 enough to -- to deter them from future violations</p> <p>13 you would have to get into my range. [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 Q. And the range you're talking about is</p> <p>17 your, Jeffrey Andrien -- Andrien's range. Right?</p> <p>18 You selected the 7 to \$20 billion figure as adequate</p> <p>19 in your opinion to deter and required to deter</p> <p>20 Google. Right?</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 A. The range that I've quantified is based</p> <p>23 on my analysis, education, training, and experience</p> <p>24 consistent with the -- the -- my assignment in this</p> <p>25 case.</p>	<p style="text-align: right;">Page 96</p> <p>1 deterrent, given the factors that I have analyzed.</p> <p>2 And I do understand that there's other</p> <p>3 factors that a jury might need to consider that I</p> <p>4 haven't considered. But based on the factors that</p> <p>5 I've considered, I believe that's the appropriate</p> <p>6 range.</p> <p>7 Q. You have not -- in your -- well, strike</p> <p>8 that.</p> <p>9 You've told us what -- that the</p> <p>10 descriptor of nonlinear is how you characterize the</p> <p>11 fact that the number of violations cannot change in</p> <p>12 this case sufficiently to change the total 7 to</p> <p>13 \$20 billion penalty range, in your opinion. Right?</p> <p>14 MR. COLLIER: Objection; form.</p> <p>15 A. That's not exactly what I said. So</p> <p>16 I want to be clear what I said.</p> <p>17 I have not seen any evidence in this case</p> <p>18 that would suggest or give any plausible basis for</p> <p>19 assuming the violation count would be so low, [REDACTED]</p> <p>20 [REDACTED], as to get to a different</p> <p>21 conclusion.</p> <p>22 Is it possible the jury decides it is?</p> <p>23 Perhaps. I haven't seen any indication or evidence</p> <p>24 in the record that would lead them there. If they</p> <p>25 do decide that, I have provided information that</p>
<p style="text-align: right;">Page 95</p> <p>1 And -- and so that's a range that I've</p> <p>2 quantified based on all the work that I've done.</p> <p>3 And based on understanding one of the lenses is</p> <p>4 Google needs to be punished for the sheer number of</p> <p>5 violations they have.</p> <p>6 Another lens is I've looked at the --</p> <p>7 what the statute allows for a punishment on a per</p> <p>8 violation basis. I've looked at their financials</p> <p>9 to -- to understand their -- their -- and -- and --</p> <p>10 and how all their business works to understand the</p> <p>11 benefits that they receive from this, in a</p> <p>12 general -- generally.</p> <p>13 And I looked at the history of other</p> <p>14 violations. And, yes, it brings me to this range.</p> <p>15 But I think that is an appropriate, carefully</p> <p>16 analyzed range that is -- that is derived from</p> <p>17 methodological, reliable, analytical work.</p> <p>18 Q. You pitched the range, and you decided --</p> <p>19 you have decided that it is that range in this case</p> <p>20 that has to be adhered to. Right, sir?</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 A. I have determined that range based -- as</p> <p>23 a financial penalties witness in this case, that's</p> <p>24 the range that I've determined would be appropriate</p> <p>25 to -- to penalize Google, to serve as an effective</p>	<p style="text-align: right;">Page 97</p> <p>1 would help them quantify that.</p> <p>2 Q. You also, in your -- and, by the way,</p> <p>3 does the term "nonlinear" appear anywhere in your</p> <p>4 opening report or that explanation, as nonlinear?</p> <p>5 MR. COLLIER: Objection; form.</p> <p>6 A. I -- I don't know if I used that term.</p> <p>7 Again, I think I've described this whole situation</p> <p>8 generally in my opening report, and the purpose of</p> <p>9 my rebuttal report is to -- is to further detail it.</p> <p>10 To make sure everybody understands what I've done</p> <p>11 and what I've relied upon.</p> <p>12 Q. Specifically my question to you is you</p> <p>13 nowhere included the term nonlinear or the</p> <p>14 explanation that this was a nonlinear theory that</p> <p>15 you were propounding in your original report, did</p> <p>16 you, sir?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. If you want me to go read my report to</p> <p>19 see if the term "nonlinear" is in here, I can do</p> <p>20 that. I don't -- I don't recall one way or another</p> <p>21 if that term is in a 90-page report or an</p> <p>22 80-some-odd-page report.</p> <p>23 I do believe the basis on how I</p> <p>24 calculated this number, in this range, is -- is</p> <p>25 detailed in this, that would lead one to conclude</p>

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<p style="text-align: right;">Page 98</p> <p>1 it's nonlinear. If I didn't use those terms, I've</p> <p>2 certainly -- I've certainly clarified and -- and</p> <p>3 further detailed and described the methodology in</p> <p>4 my -- in my rebuttal report.</p> <p>5 Q. You also, in your rebuttal report,</p> <p>6 characterize your theory of how to calculate</p> <p>7 penalties as a holistic approach or theory.</p> <p>8 Do you recall that?</p> <p>9 A. By holistic, I mean given the factors</p> <p>10 that I've been asked to consider. An analysis of</p> <p>11 all those factors -- those three factors goes into</p> <p>12 the conclusions that I've reached.</p> <p>13 Q. The word "holistic" does not appear in</p> <p>14 your original report, to your recollection, does it?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. Well, I think it's very clear in my</p> <p>17 original report that these are the factors that I'm</p> <p>18 considering to get to those conclusions. And so --</p> <p>19 to reach the conclusions I've reached.</p> <p>20 In this report I'm saying you can't take</p> <p>21 away -- I think Dr. Wiggins, in his report, was</p> <p>22 mischaracterizing what I've done. And so I was</p> <p>23 trying to clarify that that's not an appropriate</p> <p>24 characterization of what I've done. I've considered</p> <p>25 all of these three factors. And you have to</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. Do you want to point me to...</p> <p>3 Q. Well, just, you know that you've assumed</p> <p>4 a number of facts based upon, you've told us, some</p> <p>5 of these other experts in the case. Right?</p> <p>6 A. I had assumed liability --</p> <p>7 Q. And you've assumed --</p> <p>8 (Simultaneous speaking.)</p> <p>9 Q. -- or you cite other experts as support</p> <p>10 for a fact that you are assuming. Right?</p> <p>11 A. I have cited other experts and -- and</p> <p>12 have -- have based some of my conclusions based on</p> <p>13 the work of other experts.</p> <p>14 Q. And when you assume -- tell us the -- the</p> <p>15 definition of "assume" for purposes of your report?</p> <p>16 When you're referring to assuming certain</p> <p>17 facts or the opinions of other witnesses, what are</p> <p>18 you saying?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. You're asking me to define the word</p> <p>21 "assume"?</p> <p>22 Q. Yes?</p> <p>23 A. I am -- I am -- I am taking it as a fact</p> <p>24 that Google is found liable for the conduct claimed</p> <p>25 against it in this case, for example.</p>
<p style="text-align: right;">Page 99</p> <p>1 consider my analysis holistically based on those</p> <p>2 three factors.</p> <p>3 But it's very clearly described in my</p> <p>4 report, in my initial report, that those are the</p> <p>5 factors that I'm addressing.</p> <p>6 So to -- for Dr. Wiggins to -- to</p> <p>7 mischaracterize my work as something other than what</p> <p>8 I described in my opening report, I don't think was</p> <p>9 appropriate, and I wanted to make it clear in my</p> <p>10 rebuttal report that that's not the right way to</p> <p>11 look at it.</p> <p>12 Q. You don't dispute the fact, as you sit</p> <p>13 here, that the first time you used those two</p> <p>14 descriptions, that is, that my report or my theory</p> <p>15 is -- is based upon a holistic report or a holistic</p> <p>16 theory appear for the first time in your rebuttal.</p> <p>17 True?</p> <p>18 A. I -- I don't know. Let me -- I -- I can</p> <p>19 read my report to see if I can find those words in</p> <p>20 there. I think it was very clear that it is,</p> <p>21 whether those words are stated or not. But they may</p> <p>22 or may not be stated. I...</p> <p>23 Q. All right. In some aspects of your</p> <p>24 report you indicate that you assume certain facts.</p> <p>25 We've covered that. Right?</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Okay. That -- is that the working</p> <p>2 definition that -- that you had in mind when you</p> <p>3 assumed facts for purposes of your analysis and your</p> <p>4 conclusions?</p> <p>5 A. That I'm assuming that the information</p> <p>6 that I relied upon is true.</p> <p>7 Q. Okay. That somebody else has given you</p> <p>8 and you've assumed it's true. It's taken and</p> <p>9 granted as true?</p> <p>10 A. It is taken and granted as true. But I</p> <p>11 have reviewed that work. I have looked at it</p> <p>12 through the lens of my training, education,</p> <p>13 experience to see if there's things that -- to</p> <p>14 determine whether it's reasonable for me to rely</p> <p>15 upon it.</p> <p>16 And I believe based on that review, that</p> <p>17 I've relied on -- the work that I've relied on is --</p> <p>18 is reliable.</p> <p>19 Q. You also, in your report, sometimes refer</p> <p>20 to what you're -- what you're dealing with respect</p> <p>21 to the facts as something that you understand.</p> <p>22 Do you recall using that terminology in</p> <p>23 your reports?</p> <p>24 A. I do.</p> <p>25 Q. Okay. Sometimes you say "I assumed" X or</p>

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<p style="text-align: right;">Page 102</p> <p>1 Y, which you've told us you mean "I took it for</p> <p>2 granted as true." Right?</p> <p>3 A. Assuming as I've taken it as this is</p> <p>4 reliable. This is reliable information to use.</p> <p>5 Q. Now, in terms of reliability, had you</p> <p>6 ever worked with Weinberg or -- or Chandler and</p> <p>7 relied upon their information before, or their</p> <p>8 findings?</p> <p>9 A. I have not been in a case, that I'm aware</p> <p>10 of, in which I've relied on their findings in other</p> <p>11 matters.</p> <p>12 Q. The only time that you can recall is this</p> <p>13 one. Right?</p> <p>14 A. Yes.</p> <p>15 Q. And, now, what -- when you say "I</p> <p>16 understand," as you do many times in your reports,</p> <p>17 what do you mean to -- to convey by the different</p> <p>18 terminology "I understand X or Y as a fact"?</p> <p>19 A. I'm letting the reader know how I am</p> <p>20 interpreting something that I'm talking about or</p> <p>21 why -- where -- that I -- I understand that this is</p> <p>22 the right way to think about something.</p> <p>23 Q. Okay. That you -- you've come to believe</p> <p>24 or infer something to be true. You have done that?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p style="text-align: right;">Page 104</p> <p>1 important, in conveying to the reader or listener of</p> <p>2 your opinions about these -- these penalties, to</p> <p>3 know what facts you are simply assuming, given facts</p> <p>4 as correct, as opposed to things that you have</p> <p>5 obtained an independent understanding of?</p> <p>6 Do you think that that's an important</p> <p>7 distinction?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. I think it is important to provide the</p> <p>10 reader with an under -- with the information</p> <p>11 necessary to understand how I've reached the</p> <p>12 conclusions that I've reached.</p> <p>13 Q. Look with me, if you would, at page --</p> <p>14 Paragraph 90, for example, of your rebuttal report.</p> <p>15 Do you have that? Do you have that</p> <p>16 before you?</p> <p>17 A. (Pause.)</p> <p>18 I do.</p> <p>19 Q. Now, sir, you do recall and recognize</p> <p>20 that you, as we've established, have indicated in a</p> <p>21 number of instances what you have been told to</p> <p>22 assume to be a fact. Do you recall that you've done</p> <p>23 that?</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 A. I have, I believe, made it clear when I'm</p>
<p style="text-align: right;">Page 103</p> <p>1 Go ahead.</p> <p>2 A. I'm just describing what I understand</p> <p>3 about certain information.</p> <p>4 Q. Yeah, what you've come to believe to be</p> <p>5 true about certain information. Right?</p> <p>6 A. What I understand to -- about that</p> <p>7 information.</p> <p>8 Q. Now, you understand it's important, in</p> <p>9 forming an opinion about the value that you're</p> <p>10 recommending as civil penalties, that you be clear</p> <p>11 in indicating to the reader the basis for those</p> <p>12 opinions. Would you agree with that?</p> <p>13 A. I believe it's important to -- to</p> <p>14 articulate the bases and support that I have that</p> <p>15 are the underpinnings of my conclusions.</p> <p>16 Q. And not to mislead the reader or listener</p> <p>17 to your opinions into believing that you have</p> <p>18 independently investigated and arrived at a</p> <p>19 conclusion, as opposed to you have been told to</p> <p>20 assume certain facts, that distinction, you can see,</p> <p>21 would be important. Right, sir?</p> <p>22 MR. COLLIER: Objection; form.</p> <p>23 A. Would you please repeat that question?</p> <p>24 Q. Yes?</p> <p>25 Do you recognize that there -- it is</p>	<p style="text-align: right;">Page 105</p> <p>1 relying upon an assumption, what assumption I'm</p> <p>2 relying upon in my report.</p> <p>3 Q. Okay. And you also use the separate and</p> <p>4 distinct terms "I understood" or "understand" many</p> <p>5 times with respect to other facts or information.</p> <p>6 Right?</p> <p>7 A. I have also --</p> <p>8 MR. COLLIER: Objection --</p> <p>9 THE WITNESS: Excuse me. Sorry.</p> <p>10 MR. COLLIER: Objection; form.</p> <p>11 Go ahead.</p> <p>12 A. I have also used the term "understand."</p> <p>13 You're claiming that there's a major distinction</p> <p>14 between those. There might be in certain</p> <p>15 circumstances. There might not be. I'm trying to</p> <p>16 give the reader the basis for -- for -- for the</p> <p>17 reader to understand what I've done, how I've done</p> <p>18 it, and what I've relied upon.</p> <p>19 Q. At page -- or at Paragraph 90 of your</p> <p>20 rebuttal as an example, you have a header there,</p> <p>21 small A. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. There, you say: Google deceived and</p> <p>24 misled auction participant's into believing that Ad</p> <p>25 Ex ran a second price auction?</p>

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<p>1 Stated as a declarative fact. Right?</p> <p>2 A. Yes.</p> <p>3 Q. And then below that -- and you don't give</p> <p>4 attribution to why or how you arrived at any such</p> <p>5 understanding or opinion there, do you?</p> <p>6 A. I disagree with that.</p> <p>7 Q. You don't state it right there in that</p> <p>8 header. It's stated as a declarative fact, isn't</p> <p>9 it?</p> <p>10 A. The headers are -- are a preview to the</p> <p>11 reader of what's to follow and so the header tells</p> <p>12 the reader, hey, this is -- this is a conclusion and</p> <p>13 then the -- the -- the basis for that conclusion</p> <p>14 follows. So I have given the reader an</p> <p>15 understanding and the information that I relied upon</p> <p>16 to -- to reach that conclusion.</p> <p>17 Q. You use the term under -- "I understand"</p> <p>18 in excess of 85 times in your opening report alone,</p> <p>19 don't you, sir?</p> <p>20 MR. COLLIER: Objection; form.</p> <p>21 A. I have not counted the number of times</p> <p>22 that I've used that term, sir, so I can't answer</p> <p>23 that question.</p> <p>24 Q. Well, you wouldn't dispute that, I take</p> <p>25 it?</p>	<p>1 model, for example, stating that Ad Exchange uses a</p> <p>2 second-price auction model.</p> <p>3 Going on to say: When, in fact, it did</p> <p>4 not. Or by stating that all participants were on</p> <p>5 equal footing in AdX auctions when, in fact, they</p> <p>6 were not, et cetera.</p> <p>7 Do you see that?</p> <p>8 A. I do see that.</p> <p>9 Q. Okay. And you have categorized that as</p> <p>10 your understanding. Right?</p> <p>11 A. That is based upon -- and I just -- I --</p> <p>12 I reference the documents that provide that</p> <p>13 understanding. So it -- it shows the documents in</p> <p>14 which Google represents that it is a second-price</p> <p>15 auction model. And then I've -- I've showed other</p> <p>16 various times in my reports how those second-price</p> <p>17 auctions have been manipulated so they're not true</p> <p>18 second-price auctions. So -- so I think the -- the</p> <p>19 fact that they were not is detailed specifically</p> <p>20 throughout my reports.</p> <p>21 And on the second one, I've -- I've</p> <p>22 demonstrated where Google has -- has made statements</p> <p>23 that shows that the participant's are -- that --</p> <p>24 where they claim the participants are on equal</p> <p>25 footing.</p>
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<p>1 MR. COLLIER: Objection; form.</p> <p>2 A. I have no way to agree or disagree with</p> <p>3 it because I haven't -- I haven't done the math to</p> <p>4 determine what it is.</p> <p>5 Q. And dropping down to Paragraph 91, you</p> <p>6 say: I understand, however, that during the</p> <p>7 relevant period, Google falsely, misleadingly, and</p> <p>8 deceptively misrepresented the entire Ad Ex auction</p> <p>9 model, for example, stating that Ad Exchange uses a</p> <p>10 second-price auction model.</p> <p>11 Right, sir?</p> <p>12 A. I do.</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 Q. And you go on to say: When, in fact, it</p> <p>15 did not.</p> <p>16 Right, sir?</p> <p>17 A. I don't know if my first answer was</p> <p>18 recorded or not because you asked the second</p> <p>19 question before I could -- I got to it.</p> <p>20 Q. Okay.</p> <p>21 A. So what was the first question?</p> <p>22 Q. Your first -- the first point is you</p> <p>23 indicate there that you understand that during the</p> <p>24 relevant period, Google falsely, misleadingly, and</p> <p>25 deceptively misrepresented the entire AdX auction</p>	<p>1 And then I've described throughout my --</p> <p>2 my opening report or -- or in various places in my</p> <p>3 opening report about the advantages that were</p> <p>4 provided to Facebook and, therefore, they were not</p> <p>5 on equal footing.</p> <p>6 And so my understanding comes from the --</p> <p>7 from my review of the documents and -- and the</p> <p>8 information that I've received. And I'm telling</p> <p>9 the -- the reader, and this is why I believe this.</p> <p>10 This is why I understand this to be true, that it's</p> <p>11 because of Google's own documents and all the other</p> <p>12 information that I've talked about in other areas of</p> <p>13 my report.</p> <p>14 Q. And in some instances, did you rely upon</p> <p>15 references to pleadings of the plaintiffs as facts</p> <p>16 upon which you relied in arriving at your</p> <p>17 conclusions?</p> <p>18 A. There's times when I -- I'm demonstrating</p> <p>19 what I -- when I'm assuming liability, the pleading</p> <p>20 is going to demonstrate what I'm assuming in terms</p> <p>21 of liability.</p> <p>22 Q. Well, you go on to cite the complaints of</p> <p>23 the Department of Justice on antitrust matters when</p> <p>24 you're describing some of the facts that you relied</p> <p>25 upon in this case. Right?</p>

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<p style="text-align: right;">Page 110</p> <p>1 A. You'd have to refer me to the specific 2 portion of the report. 3 Q. Do you recall having done that? 4 MR. COLLIER: Objection; form. 5 A. Well, I recall citing the Department of 6 Justice complaint. I -- I don't want to 7 characterize my cite necessarily the way you just 8 did. So I want to see where exactly it is in my 9 report. 10 Q. Now, before we come to that point, one of 11 the cites that you -- 12 A. Do you want me to answer that question 13 now or do you want -- 14 Q. I'm going to ask you some other questions 15 before I come back to that. 16 A. Okay. 17 Q. Okay? 18 You've -- you've indicated that 19 Weinberg -- that you've relied upon Weinberg here in 20 his -- his report. Did you see a copy of a draft of 21 his report before you issued your report, your 22 original report? 23 A. The report, I understand, that I received 24 from Dr. Weinberg was his final report -- 25 Q. When did you get that?</p>	<p style="text-align: right;">Page 112</p> <p>1 copy of his report before you issued your report. 2 Your report was dated, what, September the 9th? 3 Your original report was earlier. Right, sir? 4 A. My original report was June 7th. 5 Q. Okay. 6 A. My -- my September 9th report was, 7 obviously, September 9th -- 8 Q. Yeah. 9 A. -- 2024. 10 Q. And his final report was September 11 the 9th, is it not? 12 A. I believe he has one report that was 13 September -- I -- I don't know the issue date, but 14 he has a rebuttal report that he issued in this 15 case. And he also has a -- I believe he had an 16 affirmative report that he issued in this case. 17 Q. And you had a copy of his first report 18 before it was physically issued or filed? 19 MR. COLLIER: Objection; form. 20 A. I had a -- what I understand to be a 21 final copy of his report before I issued my report. 22 That's -- that's as much information as I -- I have 23 about that as I can tell you. 24 Q. How long before you issued your report, a 25 day --</p>
<p style="text-align: right;">Page 111</p> <p>1 A. -- and so I relied upon -- 2 Q. Sorry. Forgive me. 3 A. So I relied upon his final report. 4 Q. Okay. His final report was issued on 5 what date? 6 A. I assume it was issued probably the same 7 date and time mine was issued. I don't know exactly 8 when his was issued, but I -- I saw the final report 9 prior to issuing my report. 10 Q. Well, weren't they issued the same date? 11 A. They may have been issued the same day, 12 but that doesn't mean it wasn't finalized before it 13 was issued. 14 Q. Well, that was my question. Did you have 15 a copy of his final report before the date that it 16 was issued? 17 MR. COLLIER: Objection; form. 18 A. My understanding, that the report that I 19 have that I relied upon was Dr. Weinberg's final 20 report. 21 Q. When did you get a copy of that report? 22 A. I don't recall a specific date, but 23 certainly within enough time to rely upon it in -- 24 in preparing my report. 25 Q. Well, let's talk about that. You had a</p>	<p style="text-align: right;">Page 113</p> <p>1 A. I don't -- 2 Q. -- two days? 3 A. Sorry. I -- I don't recall the specific 4 time frame as I sit here. But certainly enough time 5 to -- to utilize the information in that report the 6 way I did. 7 Q. Did you contact Mr. Weinberg or Chandler, 8 for that matter, or Gans at any point in time before 9 you received a draft of Weinberg's report? 10 A. I believe I had a conversation with 11 Drs. Gans and Chandler prior to the issuance of my 12 report, but there is nothing from those 13 conversations that I relied upon in issuing my first 14 report. 15 Q. Did you -- when you read any of their 16 draft -- did -- you had a draft -- copy of a 17 draft -- 18 MR. COLLIER: I'm going to object. 19 Now, Counsel, you're clearly violating 5.1 of the 20 Court's order asking about drafts. I let him -- I 21 want to be clear for the record. I let him answer 22 questions because he testified he had the final 23 version of Dr. Weinberg's report and I let you ask 24 all the questions about the final version. But I'm 25 not going to allow you to violate the Court's order</p>

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<p style="text-align: right;">Page 114</p> <p>1 and ask about drafts.</p> <p>2 MR. GIBBS: Well, I'm not going to</p> <p>3 violate the Court's order.</p> <p>4 Q. The -- my question to you is, did you</p> <p>5 call Weinberg at any time before he issued either</p> <p>6 his first or second reports? And --</p> <p>7 MR. COLLIER: You can -- you can</p> <p>8 answer that yes or no.</p> <p>9 A. I had a conversation with Dr. Weinberg</p> <p>10 prior to the issuance of my second report. As I</p> <p>11 said, I don't know when he issued his reports.</p> <p>12 Q. Did -- did -- when did that single --</p> <p>13 when did that single contact occur?</p> <p>14 A. That phone conversation? I think it's --</p> <p>15 the date is listed in my information relied upon.</p> <p>16 Q. September the 8th?</p> <p>17 A. I have to -- I don't know as I sit here</p> <p>18 so I'm going to look that up because I don't --</p> <p>19 Q. All right. If your report reflects</p> <p>20 September the 8th, that's what it would have been?</p> <p>21 A. Well, I think I can say exactly when it</p> <p>22 is because it's in my -- it's in my report. So --</p> <p>23 interviews. It was September 8th, 2024.</p> <p>24 Q. In arriving at any of -- of your original</p> <p>25 or rebuttal report, did you ever reach out and</p>	<p style="text-align: right;">Page 116</p> <p>1 can answer that question.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 A. So as I've mentioned, I've had a</p> <p>4 conversation with Dr. Gans, I've had a conversation</p> <p>5 with Dr. Chandler. Both of those conversations took</p> <p>6 place prior to the issuance of my original report.</p> <p>7 Subsequent to the issuing of my original</p> <p>8 report, I had a conversation with Dr. DeRamus and a</p> <p>9 conversation with Dr. Weinberg.</p> <p>10 Q. You indicated then -- and I think that</p> <p>11 your conversation with Weinberg took place on the</p> <p>12 8th of September. Is that right?</p> <p>13 A. That's correct.</p> <p>14 Q. And you called that an interview in your</p> <p>15 footnotes when you refer to that. Do you not?</p> <p>16 A. I do.</p> <p>17 Q. Now was that an interview or a</p> <p>18 conversation, not a interview?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. I believe they can be both. My -- my --</p> <p>21 the way I reference conversations with others in all</p> <p>22 of my expert reports is as an interview. Because</p> <p>23 what I am doing in my work is conducting data</p> <p>24 gathering and information gathering for my work.</p> <p>25 And so that conversation, and any conversation I</p>
<p style="text-align: right;">Page 115</p> <p>1 contact any of the individuals you relied upon and</p> <p>2 ask them any questions about any of their</p> <p>3 conclusions?</p> <p>4 MR. COLLIER: And I'm going to object</p> <p>5 based on Paragraph 5.11(b) which specifically</p> <p>6 prohibits this question, the content of</p> <p>7 communications between testifying experts.</p> <p>8 MR. GIBBS: Well, I'm not getting</p> <p>9 into the specifics of it.</p> <p>10 Q. Did you have any questions that caused</p> <p>11 you when you had read over Weinberg's or any of the</p> <p>12 other experts' reports that you reviewed, did you</p> <p>13 have a -- a single question for any of them about</p> <p>14 any of the matters? That --</p> <p>15 MR. COLLIER: And I'm going to object</p> <p>16 to that as calling for content, what was the content</p> <p>17 of the communications.</p> <p>18 So I'm going to instruct you not to</p> <p>19 answer.</p> <p>20 Q. Okay. Did you call them for any purpose</p> <p>21 relating to your report at any point in time?</p> <p>22 MR. COLLIER: Mr. Andrien, you can</p> <p>23 answer the question which I think already you have</p> <p>24 on September 8th, factually, which if any of the</p> <p>25 testifying experts in this case did you call? You</p>	<p style="text-align: right;">Page 117</p> <p>1 have in any of my reports with -- with someone is --</p> <p>2 I refer to as an interview. That's how I refer to</p> <p>3 those conversations.</p> <p>4 Q. How long was this one conversation with</p> <p>5 Weinberg?</p> <p>6 A. I don't recall the length of time as I</p> <p>7 sit here, I -- I --</p> <p>8 Q. If the record reflects it was five</p> <p>9 minutes, would you quarrel with that?</p> <p>10 MR. COLLIER: Objection; form.</p> <p>11 A. I don't recall the length of time that</p> <p>12 that conversation happened as -- as I sit here right</p> <p>13 now, I don't recall.</p> <p>14 Q. And you interviewed him for five minutes?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. As I said, I don't know the length of</p> <p>17 time of that call and I had a conversation with</p> <p>18 Dr. Weinberg on September 8th. I don't recall the</p> <p>19 length of time.</p> <p>20 Q. Yeah, well, in that singular October 8th</p> <p>21 contact, if he says it's five minutes, do you</p> <p>22 quarrel with that?</p> <p>23 MR. COLLIER: Objection; form.</p> <p>24 A. I -- I -- I can't agree or disagree with</p> <p>25 it because I don't know, as I sit here, how long</p>

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<p>1 that conversation was.</p> <p>2 Q. But anyway, that's what you call an</p> <p>3 interview of Weinberg in your report?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. That is what I'm referring to in -- in my</p> <p>6 Appendix 2 on my rebuttal report as an interview.</p> <p>7 But all conversations that I have with others, I --</p> <p>8 I list as interviews.</p> <p>9 Q. All right. Let's look at --</p> <p>10 MR. COLLIER: Counsel, if you're</p> <p>11 shifting gears, it's been far more than an hour,</p> <p>12 but --</p> <p>13 MR. GIBBS: Oh, okay.</p> <p>14 MR. COLLIER: But if you're not, I</p> <p>15 don't want -- I'm not trying to preclude you.</p> <p>16 MR. GIBBS: I'm shifting gears.</p> <p>17 THE VIDEOGRAPHER: Going off the</p> <p>18 record. The time is 11:46.</p> <p>19 (Break.)</p> <p>20 THE VIDEOGRAPHER: We're back on the</p> <p>21 record. The time is 12:03.</p> <p>22 Q. Mr. Andrien, look at your opening report</p> <p>23 at Paragraph 108, would you. Do you have that</p> <p>24 before you?</p> <p>25 A. I'm just about there. I'm there.</p>	<p>1 federal statutes and other statutes as support for</p> <p>2 the notion of deterring future violations of these</p> <p>3 statutes. Right?</p> <p>4 A. I think what I'm doing in -- in</p> <p>5 Paragraph 8 is saying exactly what it says. But I</p> <p>6 understand several statutes allow for trebling</p> <p>7 damages to establish deterrence of future</p> <p>8 misconduct. And I'm giving examples as I understand</p> <p>9 those examples that do that.</p> <p>10 Q. Right. And because here you're talking</p> <p>11 about the concept of deterrence which is one of the</p> <p>12 three factors that you focused on in support of your</p> <p>13 penalties. Right?</p> <p>14 A. I -- this -- I am addressing the amount</p> <p>15 necessary to deter future violations in section F of</p> <p>16 that report which Paragraph 108 falls under.</p> <p>17 Q. And with respect to the antitrust</p> <p>18 statutes, there are some 17 antitrust statutes by</p> <p>19 the states in our case here. Right?</p> <p>20 A. I -- I don't know the number of antitrust</p> <p>21 statutes in this case. I've never counted that up.</p> <p>22 Q. Okay. Well, in any event, you -- you're</p> <p>23 familiar with the Clayton Act apparently because you</p> <p>24 used it here to make the point. True?</p> <p>25 A. I am --</p>
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<p>1 Q. All right. There you indicate that</p> <p>2 quote: I understand that several statutes allow for</p> <p>3 trebling damages to establish deterrence of future</p> <p>4 misconduct?</p> <p>5 Do you see that reference there?</p> <p>6 A. I do.</p> <p>7 Q. And you're referring there to other</p> <p>8 federal statutes as examples of deterrence-based</p> <p>9 penalties and the like?</p> <p>10 A. I am referring to specifically a -- a</p> <p>11 federal statute there.</p> <p>12 Q. And you -- you point out there that the</p> <p>13 Clayton act among others which is an</p> <p>14 antitrust-related statute. Right?</p> <p>15 A. That's -- that's one I address, yes.</p> <p>16 Q. Yeah. And you say you're looking there</p> <p>17 for support for your notion of what constitutes</p> <p>18 deterrence in statutory-related penalties. Would</p> <p>19 that be fair?</p> <p>20 A. Would you repeat the way you said that?</p> <p>21 Would you --</p> <p>22 Q. Yes?</p> <p>23 A. -- say that again? I want to make sure I</p> <p>24 agree with that or disagree.</p> <p>25 Q. You're citing potential considerations of</p>	<p>1 MR. COLLIER: Objection; form.</p> <p>2 A. I am familiar with the Clayton Act.</p> <p>3 Q. And you cited there to the reader you</p> <p>4 say: It is recognized that the purposes of trebling</p> <p>5 damages is twofold. Do you see that?</p> <p>6 A. Would you tell me where you are?</p> <p>7 Q. I'm sorry. Footnote 83.</p> <p>8 A. Okay. Thank you. Sorry.</p> <p>9 Q. Do you see that?</p> <p>10 A. That is -- that's a quote.</p> <p>11 Q. Quote that you included here. Is my</p> <p>12 point, right?</p> <p>13 A. It is a quote that I included.</p> <p>14 Q. And you say that the two purposes or</p> <p>15 two -- twofold purposes of trebling under these</p> <p>16 statutes is to compensate plaintiffs for their</p> <p>17 injury, past injury. Right?</p> <p>18 A. Again, this is a quote. It's not that</p> <p>19 I'm saying it. I'm -- I'm quoting that someone</p> <p>20 else has said it.</p> <p>21 Q. Yes, sir. You selected it to make the</p> <p>22 points presumably that it includes -- that you</p> <p>23 included here. Right? Regarding deterrence?</p> <p>24 A. I think this -- this does support my</p> <p>25 understanding that I talk about in Paragraph 108.</p>

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<p style="text-align: right;">Page 122</p> <p>1 Q. And the state statutes are modelled as</p> <p>2 you understand it after the federal statutes, these</p> <p>3 antitrust statutes. Right?</p> <p>4 A. Again, I'm not a lawyer. I've -- I've</p> <p>5 never studied why -- how the state statutes are</p> <p>6 modelled. It wouldn't surprise me if that were the</p> <p>7 case, but it's outside the scope of my work in this</p> <p>8 case.</p> <p>9 Q. Well, did you look at any of the state</p> <p>10 antitrust statutes as part of your work to</p> <p>11 familiarize yourself with them?</p> <p>12 MR. COLLIER: Objection; form.</p> <p>13 A. I -- I may have seen some of the state</p> <p>14 antitrust factors. I don't recall as I sit here.</p> <p>15 I -- as I've mentioned in my report and sitting here</p> <p>16 today, I was focused on the deceptive conduct at</p> <p>17 issue in this case. Not the anti -- anticompetitive</p> <p>18 conduct.</p> <p>19 Q. Well, the point you made here was that</p> <p>20 in -- under the federal antitrust laws, the</p> <p>21 deterrence or the purpose behind treble damages</p> <p>22 which is the statutory additional amount as you</p> <p>23 would understand it that can be awarded if liability</p> <p>24 is established. Right?</p> <p>25 A. I --</p>	<p style="text-align: right;">Page 124</p> <p>1 issue of deterrence.</p> <p>2 Q. What about the state statutes on the</p> <p>3 issue of deterrence and the purpose of penalties</p> <p>4 under the state statutes, including the antitrust</p> <p>5 statutes. Did you go and look to see what the state</p> <p>6 statutes said about the purpose of trebling?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. I have looked at the state statutes in</p> <p>9 this case. For purposes of the economic point I was</p> <p>10 making, I didn't need to go beyond what I -- what</p> <p>11 I've referenced. It's just an example that I was</p> <p>12 saying -- or -- or demonstrating that deterrence --</p> <p>13 courts have -- have looked at this issue of</p> <p>14 deterrence before, and this is one way that -- that</p> <p>15 courts under certain statutes have considered it.</p> <p>16 Q. And with respect to the states' claims</p> <p>17 under these state laws, did you go and at least look</p> <p>18 to see what the trebling features were under those</p> <p>19 statutes?</p> <p>20 MR. COLLIER: Objection; form.</p> <p>21 A. I have looked at the state statutes</p> <p>22 related to the deceptive conduct in this case, as I</p> <p>23 understand them, and I've laid those out in my</p> <p>24 report, what those -- that I understand them to be.</p> <p>25 And I understand that deterrence is one</p>
<p style="text-align: right;">Page 123</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. I understand that from an economic</p> <p>3 perspective, damages can be trebled in certain</p> <p>4 circumstances for the purposes -- for at least the</p> <p>5 purposes that I've cited here in Footnote 283.</p> <p>6 Q. Okay. And the -- as you understand it</p> <p>7 under these antitrust statutes, they are designed to</p> <p>8 both compensate the plaintiffs for their injury and</p> <p>9 to deter future violations. Right, the trebling?</p> <p>10 A. That's what it says.</p> <p>11 Q. Okay. And basically the -- the state</p> <p>12 statutes mirror that as you understand it. Right?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. I, again, I haven't studied the state</p> <p>15 statutes with -- in looking at that to determine if</p> <p>16 they mirror it or not as you say.</p> <p>17 Q. Okay.</p> <p>18 A. So I don't have an opinion on that one</p> <p>19 way or another.</p> <p>20 Q. So in arriving at your conclusions here,</p> <p>21 you cite the federal trebling purposes. Right?</p> <p>22 A. I cite the federal act, the Clayton Act</p> <p>23 and the RICO Act as an example that from an economic</p> <p>24 perspective, this concept of trebling has been</p> <p>25 applied by various statutes to account for this</p>	<p style="text-align: right;">Page 125</p> <p>1 of the things that one would consider in looking at</p> <p>2 the penalty. And because I was asked to look at</p> <p>3 deterrence, I wanted to look as an economist, as a</p> <p>4 financial economist. I'd want to look at that,</p> <p>5 understand if there's any basis for me understanding</p> <p>6 how courts might look at this, as well as</p> <p>7 understanding it from an -- from an economic,</p> <p>8 theoretical perspective, and understanding the</p> <p>9 financial perspective, and then applying the facts</p> <p>10 and circumstances in this case to -- to my overall</p> <p>11 understanding to ensure that the range that I come</p> <p>12 up with meets the -- the -- the factor that I was</p> <p>13 asked to consider, which is what -- what penalty</p> <p>14 would serve as a -- let me just -- amount necessary</p> <p>15 to deter future violations.</p> <p>16 Q. Okay. Well, the federal statute that you</p> <p>17 cited here has twofold purposes behind the statutory</p> <p>18 penalties, doesn't it?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 Q. Past injury compensation is one. Right?</p> <p>21 A. That is one, yes.</p> <p>22 Q. And the other one is deterring future</p> <p>23 violations of the antitrust laws. Right?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And my question was did you look</p>

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<p style="text-align: right;">Page 126</p> <p>1 at the state's antitrust statutes and their trebling 2 features to see what the purposes of those were 3 according to the states? 4 A. I may or may not have looked at those 5 antitrust statutes. As I -- as I sit here, I don't 6 recall specifically those antitrust state statutes. 7 But it wasn't necessary for me to review them for 8 purposes of my analysis in this case. 9 What I am doing here is assessing 10 penalties on the alleged deceptive conduct in this 11 case, and I am trying to ascertain what penalty 12 would be an appropriate amount to punish Google for 13 those violations and deter Google from -- and others 14 from future violations. 15 Q. Were you interested in what the states 16 were saying about the other group of statutes, the 17 antitrust statutes, state antitrust statutes, under 18 which your clients were suing in this case? 19 MR. COLLIER: Objection; form. 20 A. Would you repeat the question? 21 Q. Were you interested in deterring -- 22 evaluating how to define deterrence in these state's 23 laws? Did you look at their state antitrust laws 24 and see if they dealt with deterrence and indicated 25 the purposes behind deterrence in -- in those</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yeah. I know what you're asking. I'm 2 going to give a complete answer again, like I just 3 did. 4 And my answer is that, well, as I sit 5 here right now I don't recall looking at the state 6 antitrust statutes for that purpose. However, that 7 was not required or necessary to reach the 8 conclusions I've reached because what I was trying 9 to do in this case, and what I've done in this case 10 is to determine what an appropriate penalty would be 11 for -- to punish Google for the actions that it's -- 12 the -- the deceptive actions that it's accused of 13 taking in this case and -- and determine what -- 14 what penalty would be -- would reasonably deter 15 Google and others from future misconduct. 16 MR. GIBBS: Objection; nonresponsive. 17 Q. It's just very simple. 18 Did you -- I'm not asking you why you 19 didn't do it or what else you might have done. 20 Did you look at those statutes, the 21 states' statutes, as it bears on the deterrent 22 factor in their treble damage statutory penalties, 23 yes or no? 24 MR. COLLIER: Objection; form. 25 A. And I'm going to give the same answer I</p>
<p style="text-align: right;">Page 127</p> <p>1 states? 2 MR. COLLIER: Objection; form. 3 A. As I sit here, I don't recall looking at 4 those state antitrust statutes for that purpose, nor 5 was that necessary to do for -- for my work in this 6 case. 7 My work in this case was related to the 8 deceptive conduct, and I looked at the statutes and 9 some case law around the notion that -- that this -- 10 that deterrence is an important consideration. And 11 then I applied economically appropriate 12 methodologies and financial methodologies to -- to 13 determine what would serve as an appropriate 14 deterrence in this case. 15 MR. GIBBS: Objection; nonresponsive. 16 Q. Simple question. Did you or did you not 17 look at the states' statement under the antitrust 18 laws of those states to see what they had to say 19 about deterrence and the purpose of their trebling 20 features? 21 MR. COLLIER: Objection; form. 22 Q. You either did or you didn't. 23 A. I know -- 24 MR. COLLIER: Objection; form, asked 25 and answered.</p>	<p style="text-align: right;">Page 129</p> <p>1 gave last time, and the time before that, and -- and 2 every time you ask me this question because it's 3 important for me, I think, under oath to give a 4 complete answer and put it into context, so I'm 5 going to do that every time. I'm happy to state the 6 answer again. 7 Q. No, I'll accept it. I'll accept that 8 you're going to state the same thing and I'll 9 interpose the same objection. 10 MR. GIBBS: Nonresponsive. 11 A. Okay. 12 Q. I'm just asking you whether you did 13 something or you didn't, not why you did. That 14 could clarify for purposes of my future questions. 15 I'll bear that in mind. 16 I may be just asking you a simple 17 question. Did you do something or did you not, not 18 why you didn't do it, or why you were justified in 19 not doing it. Maybe that clarification will help. 20 Do you think it might? 21 MR. COLLIER: Objection; form. 22 A. I am going to answer the questions as I 23 think they need to be answered with a complete 24 context around them, such that my answers cannot be 25 misconstrued. I'm going to be very clear and give</p>

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<p style="text-align: right;">Page 130</p> <p>1 full answers. I'm under oath and I think it's</p> <p>2 important for me to do so.</p> <p>3 Q. Did you, sir, take into account as a</p> <p>4 factor, compensating plaintiffs for their injury</p> <p>5 in -- in this case?</p> <p>6 MR. COLLIER: Objection; form.</p> <p>7 Q. Was that one of the factors?</p> <p>8 A. I understood that there is parties that</p> <p>9 are harmed as a result of the conduct that -- the</p> <p>10 misconduct at issue in this case.</p> <p>11 But because I was provided the lens of</p> <p>12 looking at deterrence, the -- the penalty amount</p> <p>13 that I derived is a penalty that -- that is for the</p> <p>14 violations, it is punishing Google for the</p> <p>15 misconduct, as well as -- as deterring Google and</p> <p>16 others from future misconduct.</p> <p>17 Q. Detering -- deterring future conduct is</p> <p>18 the lens through which you were making that</p> <p>19 determination. True?</p> <p>20 MR. COLLIER: Objection; form.</p> <p>21 A. It is -- one of the lenses was the amount</p> <p>22 necessary to deter future violations.</p> <p>23 Q. Okay. Don't see in those three factors</p> <p>24 that you utilized in your calculations compensation</p> <p>25 for past injury. That was not in there, was it?</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Who told you to pick those and focus</p> <p>2 those -- on those three factors that constitute the</p> <p>3 lens of your conclusions, as you described it?</p> <p>4 MR. COLLIER: Mr. Andrien, I give you</p> <p>5 the same instruction before pursuant to the Court's</p> <p>6 September 13th, 2023, order. If giving that answer</p> <p>7 would require you to disclose communications with</p> <p>8 counsel, I instruct you not to do so. However, if</p> <p>9 you can answer that question without disclosing</p> <p>10 communications with counsel, you're free to do so.</p> <p>11 THE WITNESS: Thank you.</p> <p>12 A. I don't believe I'm able to answer that</p> <p>13 question without violating the stipulation that</p> <p>14 Mr. Collier just referenced.</p> <p>15 Q. All right. And you refuse to answer on</p> <p>16 that basis?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 There's no refusal.</p> <p>19 A. I -- I've been advised by counsel that my</p> <p>20 answering that would violate the stipulation, and --</p> <p>21 and, therefore, I'm not going to answer that for</p> <p>22 that reason.</p> <p>23 Q. Did you independently determine that</p> <p>24 those were the three factor lens through which you</p> <p>25 should conduct your civil penalties evaluation in</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. Well, I've talked throughout my report,</p> <p>3 the opening report, of how I understand harm has</p> <p>4 occurred to participants in those various auctions</p> <p>5 as a result of Google's misconduct. So I do</p> <p>6 understand that harm has occurred.</p> <p>7 And I do understand, and I explained in</p> <p>8 my rebuttal report, that economic theory on</p> <p>9 deterrence considers the overall impact to society.</p> <p>10 However -- and I also state this in my rebuttal</p> <p>11 report -- when we -- when we -- when we flip the</p> <p>12 lens to focus on deterrence, now we go from the harm</p> <p>13 to society and look at the -- the -- the benefit to</p> <p>14 the offender, in this case Google.</p> <p>15 And so while I understand there's harm</p> <p>16 and Google needs to be punished for that, which is</p> <p>17 part -- I understand that's why we have these</p> <p>18 statutes and penalty amounts in the statutes. So I</p> <p>19 did consider that, I considered the -- the -- the</p> <p>20 size of the per violation penalties associated with</p> <p>21 those statutes, I understand that they have a -- a</p> <p>22 -- a penalty -- a punishment component to it.</p> <p>23 But the lens that I had to apply was</p> <p>24 deterrence, so that moves from societal harm to</p> <p>25 Google's benefits.</p>	<p style="text-align: right;">Page 133</p> <p>1 this case?</p> <p>2 A. That was my assignment, to evaluate</p> <p>3 penalties and to consider those factors in doing so.</p> <p>4 Q. Okay. My question is in picking those</p> <p>5 three factors for your lens of your opinions, did</p> <p>6 you independently decide those were the three proper</p> <p>7 ones to apply?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 Same instruction.</p> <p>10 A. I -- I -- I can just tell you what my</p> <p>11 assignment was, and -- and I executed my assignment.</p> <p>12 I determined independently that I was -- I was --</p> <p>13 Q. Doing what you were told?</p> <p>14 A. -- able to do that assignment, that I --</p> <p>15 that falls within kind of the area of -- of -- of</p> <p>16 training, education, experience that I have.</p> <p>17 Q. Okay.</p> <p>18 A. And so I -- I conducted my assignment.</p> <p>19 Q. Did you independently attempt to conclude</p> <p>20 on your own behalf that those were the three best or</p> <p>21 appropriate factors to take into account in -- in</p> <p>22 doing your report?</p> <p>23 MR. COLLIER: I would give you the</p> <p>24 same instruction. I don't know your answer.</p> <p>25 A. I'm going to say the same answer as I</p>

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<p style="text-align: right;">Page 134</p> <p>1 gave last time. This was my assignment I was asked</p> <p>2 to perform. I determined independently if I thought</p> <p>3 I could add value to that assignment. I believe I</p> <p>4 can. I believe I have. And I've performed that</p> <p>5 assignment.</p> <p>6 Q. Okay. So you concluded independently</p> <p>7 that you couldn't add value, that is, change or add</p> <p>8 to those factors that were the primary focus of your</p> <p>9 opinions. True?</p> <p>10 A. Would you please repeat that question?</p> <p>11 Q. Yes. Yes.</p> <p>12 You did not independently conclude that</p> <p>13 you should add a different factor or factors than</p> <p>14 the three that you have described as the lens?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. I was asked to perform a certain analysis</p> <p>17 that was my assignment, and I performed my</p> <p>18 assignment.</p> <p>19 Q. All right, sir. Did you look at the</p> <p>20 factors that are to be considered under the DTPAs of</p> <p>21 each of the 17 states, claimants?</p> <p>22 A. I believe I have, yes.</p> <p>23 Q. Did you look at them to determine whether</p> <p>24 they should, any of them should be included in your</p> <p>25 lens, the three factors that you have identified?</p>	<p style="text-align: right;">Page 136</p> <p>1 Act and where I got that understanding from and I</p> <p>2 acknowledge throughout my report that I've been</p> <p>3 asked to address -- that my assignment is to address</p> <p>4 three of them and the jury might be asked to</p> <p>5 consider other factors in coming to their ultimate</p> <p>6 conclusion.</p> <p>7 Q. Okay. So how many of the three factors</p> <p>8 are listed under the Texas statute?</p> <p>9 MR. GIBBS: Objection; form.</p> <p>10 A. Would you repeat the question, please?</p> <p>11 Q. Yes, sir.</p> <p>12 Under the Texas DTPA, where -- where are</p> <p>13 the factors -- three factors that you undertook to</p> <p>14 examine?</p> <p>15 A. I've been asked to examine No. 2, the</p> <p>16 history of previous violations; No. 3, the amount</p> <p>17 necessary to deter future violations; and No. 4, the</p> <p>18 economic effect on the person against whom the</p> <p>19 penalty is to be assessed.</p> <p>20 Q. You did not select the seriousness of the</p> <p>21 violation, including the nature of circumstances,</p> <p>22 extent, and gravity of any prohibited act or</p> <p>23 practice. Right?</p> <p>24 A. That factor is outside the scope of my</p> <p>25 assignment.</p>
<p style="text-align: right;">Page 135</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. I -- I have been given an assignment in</p> <p>3 this case. I performed the assignment that I was --</p> <p>4 I was asked to perform and that's the work that I</p> <p>5 performed. I -- I did analyze the different</p> <p>6 statutes under which my -- my assignment fall and to</p> <p>7 ensure that I felt it was reasonable to do this</p> <p>8 assignment, which I did.</p> <p>9 Q. How many -- excuse me.</p> <p>10 A. And I do.</p> <p>11 Q. How many factors does the Texas DTPA</p> <p>12 indicate should be taken into account?</p> <p>13 A. I have those listed in my report. Let me</p> <p>14 just go find it for you and you can answer that</p> <p>15 question specifically rather than go by</p> <p>16 recollection.</p> <p>17 As I have listed on Page 40 and 41 of my</p> <p>18 report --</p> <p>19 Q. Opening?</p> <p>20 A. My opening report, yes.</p> <p>21 I understand that the Texas DTPA provides</p> <p>22 the following list of factors for the trier of fact,</p> <p>23 shall consider in determining the level of a</p> <p>24 penalty. I list those six, as I understand them to</p> <p>25 be. I sourced the Texas Deceptive Trade Practices</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. And you also ignored the factor of</p> <p>2 knowledge of the illegality or of the active</p> <p>3 practice. Right?</p> <p>4 A. That factor was outside my assignment and</p> <p>5 outside the scope of the work that I -- that I've</p> <p>6 been assigned to perform in this matter.</p> <p>7 Q. How about the Alaska statute, what</p> <p>8 factors does the Alaska statute ask you to consider</p> <p>9 or require that you consider?</p> <p>10 A. Do we have a list of the -- the statutes</p> <p>11 here? I can -- I can -- I don't recall from memory,</p> <p>12 but I can look at this Page 31 of my report.</p> <p>13 "The Alaska Unfair Trade Practices and</p> <p>14 Consumer Protection Act declare unfair or deceptive</p> <p>15 acts or practices in the conduct of a trade or</p> <p>16 commerce unlawful. The State of Alaska alleges that</p> <p>17 Google has violated the AUTPCPA specifically by</p> <p>18 engaging in other conduct creating a likelihood of</p> <p>19 confusion or a misunderstanding and that misleads,</p> <p>20 deceives or damages a buyer or competitor in</p> <p>21 connection with the sale or advertisement of goods</p> <p>22 and services and using or employing deception fraud,</p> <p>23 false pretense, false promise, misrepresentation or</p> <p>24 knowingly concealing, suppressing or omitting</p> <p>25 material fact with the intent that others rely upon</p>

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<p>1 the concealment, suppression or omission in</p> <p>2 connection with the sale or advertisement of goods</p> <p>3 or services, whether or not a person has, in fact,</p> <p>4 been misled, deceived, or damaged and allows for</p> <p>5 civil penalties between 1,000 and 2,500.</p> <p>6 And I have to see if there's a footnote</p> <p>7 anywhere in my report that would -- I have cited</p> <p>8 it -- my report doesn't specifically call it out, at</p> <p>9 least in that section. I would have to go through</p> <p>10 and read the -- the statute from the -- from the</p> <p>11 footnote that I put to answer that question --</p> <p>12 Q. Okay?</p> <p>13 A. -- because I don't have it memorized.</p> <p>14 MR. GIBBS: Objection; nonresponsive.</p> <p>15 Q. My question was unlike your -- you</p> <p>16 recounted the six factors under the Texas statute in</p> <p>17 your report. True?</p> <p>18 A. You've asked me what the six were. I've</p> <p>19 listed them in my report.</p> <p>20 Q. And I asked you if you looked at the --</p> <p>21 the parallel factors to be considered under the</p> <p>22 Alaska statute and you read me the whole thing where</p> <p>23 you generally describe the statute, but you didn't</p> <p>24 list any of the factors there, did you?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p>1 my understanding of -- of either the factors or --</p> <p>2 or the basis for understanding that these are</p> <p>3 relevant factors for those states.</p> <p>4 Q. My question, sir, is how did you decide</p> <p>5 there are -- there are many more than three factors,</p> <p>6 will you agree with that, among the 16 states</p> <p>7 differing DTPA statutes? You agree with that?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. I would agree that certain states have</p> <p>10 more than three factors to consider.</p> <p>11 Q. Well, Texas alone has more than three and</p> <p>12 you selected three and did not select the other</p> <p>13 three because that was outside your assignment you</p> <p>14 told us. Right?</p> <p>15 A. My assignment was to analyze the penalty</p> <p>16 to Google, appropriate penalty to Google for -- as</p> <p>17 punishment for -- for the misconduct at issue, the</p> <p>18 deceptive conduct at issue, and to determine what an</p> <p>19 appropriate penalty would be, given those three</p> <p>20 factors as a -- as an additional lens.</p> <p>21 Q. How did you decide that you shouldn't</p> <p>22 consider or add to those three factors many of the</p> <p>23 other factors that differing states require the</p> <p>24 fact-finder to consider?</p> <p>25 MR. COLLIER: Objection; form.</p>
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<p>1 A. Not there, but I do have a place in my</p> <p>2 report where I -- I believe I have demonstrated that</p> <p>3 I understand the other states have similar-type</p> <p>4 factors, either through their statutes or -- or case</p> <p>5 law. And so I -- I did reference the Alaska</p> <p>6 statute. I know I've looked at it. And if you want</p> <p>7 to put it in front of me, I'm happy to refresh my</p> <p>8 recollection of that question.</p> <p>9 Q. I'm talking about your report. Your</p> <p>10 report doesn't include and list any of the factors</p> <p>11 under the Alaska or the rest of these states'</p> <p>12 statutes that are to be considered under each of</p> <p>13 those statutes, does it?</p> <p>14 MR. COLLIER: Objection; form.</p> <p>15 A. That's not true. For example --</p> <p>16 Q. Do you --</p> <p>17 A. Let me answer the question.</p> <p>18 For example, under South Carolina, South</p> <p>19 Carolina provides guidance on the factors to</p> <p>20 consider and I list those and -- but I also -- let</p> <p>21 me just -- can you just give me a minute here.</p> <p>22 (Pause.)</p> <p>23 I believe it's in my rebuttal report. I</p> <p>24 think in my opening report, if you look at the</p> <p>25 footnotes, I have -- I've described for many states</p>	<p>1 A. Any factors that I did not address were</p> <p>2 outside the scope of my assignment in this case.</p> <p>3 Q. Okay. So you're not expressing an</p> <p>4 opinion on whether those are the right or correct</p> <p>5 factors, I take it? They're just part of your</p> <p>6 assignment?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. I think I've addressed in my report that</p> <p>9 based on my review of the statutes in the different</p> <p>10 states and -- and what I've reviewed, that I think</p> <p>11 these are appropriate factors to consider in this</p> <p>12 case and that there may be potential others that the</p> <p>13 jury is asked to consider.</p> <p>14 But -- but given that I've been asked</p> <p>15 to -- to -- my assignment is -- is to address</p> <p>16 penalties given these three factors, that's what</p> <p>17 I've done. I believe it's appropriate. I believe</p> <p>18 I've given basis in my report for why it's</p> <p>19 appropriate and -- and so I performed -- performed</p> <p>20 that work.</p> <p>21 Q. There are no -- there's no state-by-state</p> <p>22 review in here of the penalties and why you would --</p> <p>23 elected to exclude from your three the other</p> <p>24 penalties to the extent they existed in each state,</p> <p>25 is there?</p>

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<p style="text-align: right;">Page 142</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. I -- I don't understand that question. I</p> <p>3 do have a chart in my report that does list the --</p> <p>4 the maximum statutory penalties or the penalty range</p> <p>5 for each one of the states so --</p> <p>6 Q. Not asking that question?</p> <p>7 A. Well, that's how I understood it. I'm</p> <p>8 sorry.</p> <p>9 Q. I'm asking the factors, not the -- not --</p> <p>10 I'm not asking you now about caps. Okay? That's a</p> <p>11 separate question. I'm talking now about the</p> <p>12 factors that are to be considered under the statutes</p> <p>13 like the degree of culpability and good or bad</p> <p>14 faith, for example?</p> <p>15 A. Okay. Would you please repeat your</p> <p>16 question --</p> <p>17 Q. Yes. My question was --</p> <p>18 A. -- because I misunderstood it, I believe,</p> <p>19 sir.</p> <p>20 Q. Did you go state by state through and say</p> <p>21 while Texas has six factors, I picked these three</p> <p>22 and here's why those three are the right ones and</p> <p>23 the other three can be ignored for my purposes? Did</p> <p>24 you do that?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. I believe I -- I -- I've been trying to</p> <p>2 answer this question. I've been -- I've been -- my</p> <p>3 assignment was to look at these three. I've</p> <p>4 reviewed the statutes to determine if that's a</p> <p>5 reasonable assignment. I believe it was a</p> <p>6 reasonable assignment. I believe I have</p> <p>7 information, skill, experience, training</p> <p>8 capabilities that is going to assist the trier of</p> <p>9 fact in analyzing those three factors. And I -- I</p> <p>10 made it very clear in my report that I understand</p> <p>11 the jury might be asked to consider other factors as</p> <p>12 well, but this would serve as a useful, important,</p> <p>13 reliable information for the jury to consider</p> <p>14 relevant -- relative to those three factors.</p> <p>15 MR. GIBBS: Objection; nonresponsive.</p> <p>16 Q. Now, sir, you're a part-time teacher,</p> <p>17 right -- lecturer?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I am a faculty member at the McCombs</p> <p>20 School of Business at the University of Texas, their</p> <p>21 finance department and in that capacity I annually</p> <p>22 and even most semesters teach graduate-level courses</p> <p>23 in finance.</p> <p>24 Q. Have you ever taught techniques for</p> <p>25 assessing civil penalties under a deceptive trade</p>
<p style="text-align: right;">Page 143</p> <p>1 A. As you've asked the question, I -- I -- I</p> <p>2 was asked and assigned to analyze those three</p> <p>3 factors. I looked through the statutes and my</p> <p>4 understanding, based on those statutes and based on</p> <p>5 what I've reviewed, that for all those states, these</p> <p>6 are reasonable factors to consider. I've been asked</p> <p>7 to consider them as my assignment. I considered</p> <p>8 them and came to my conclusions based -- based on</p> <p>9 the work that I performed.</p> <p>10 Q. And you would agree that if somebody had</p> <p>11 assigned you to look at and to form the opinion</p> <p>12 under three others or three from various other</p> <p>13 states total, that would have been what you would</p> <p>14 have done?</p> <p>15 A. I -- I can't answer that --</p> <p>16 MR. COLLIER: Objection; form.</p> <p>17 A. I can't answer that question because</p> <p>18 that's not what I was asked to do.</p> <p>19 Q. Okay?</p> <p>20 A. I don't know what I would have done had I</p> <p>21 been asked to do something else.</p> <p>22 Q. So you didn't -- you didn't independently</p> <p>23 say, I'll do these three, but I shouldn't or I have</p> <p>24 an opinion different from these three, did you?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p style="text-align: right;">Page 145</p> <p>1 practices act?</p> <p>2 A. I believe --</p> <p>3 MR. COLLIER: Objection; form.</p> <p>4 A. I believe I've taught the -- the</p> <p>5 quantitative methodologies and the financial</p> <p>6 theories that would underline -- underlie</p> <p>7 calculating penalties. So I believe I have taught</p> <p>8 relevant information and routinely teach relevant</p> <p>9 information that would be important to apply in</p> <p>10 determining penalties including DTPA penalties.</p> <p>11 Q. Have you ever taught a course that was</p> <p>12 designated as a course to determine how to calculate</p> <p>13 civil penalties under a statute, the DTPA statute of</p> <p>14 any state?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. I have not had a course entitled how to</p> <p>17 calculate DTPA penalties under a certain state. As</p> <p>18 I said I have -- I do and have routinely taught the</p> <p>19 financial tools and theories that one would need</p> <p>20 to -- to apply in calculating a penalty.</p> <p>21 Q. Your violation count, I want to ask you</p> <p>22 about that. Your violation count is dependent on a</p> <p>23 assumption provided to you by somebody else. Would</p> <p>24 that be true?</p> <p>25 MR. COLLIER: Objection; form.</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. My violation count is based on my 2 understanding of what constitutes a violation. And 3 my understanding of what constitutes a violation, 4 for that understanding I've relied on Dr. Weinberg. 5 Q. Okay. And Dr. Weinberg, what is his 6 specialty, if you know, what does he hold himself 7 out as an expert on? 8 A. I'd have to go back and review his -- I'd 9 have to go back and review his -- his report and CV 10 to see if that's mentioned. But I -- I understand 11 he's an -- an economist who understands auctions and 12 understands -- understands the -- the information he 13 needed to -- he used to reach his conclusions. 14 Q. Did you -- have you read his deposition 15 in this case? 16 A. I have not read his deposition in this 17 case. 18 Q. Any portion of it? 19 A. I have not read his deposition in this 20 case. 21 Q. Has anybody read it to you or summarized 22 it for you? 23 A. Not that I recall as I sit here. 24 Q. Is there any doubt in your mind about 25 that?</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Okay? 2 A. It's empirical. 3 Q. In other words, go on the theoretical 4 side that would be perhaps the design of aspects or 5 in this case mechanics or functional parts of an -- 6 of a auction. Would that be the kind of things that 7 would be included in the theoretical? 8 MR. COLLIER: Objection; form. 9 A. I think you would be best served 10 asking -- asking Dr. Weinberg about that because 11 he's the auction theorist. My understanding is that 12 auction economists were involved in auctions even 13 theoretical economists. And I know this because 14 my -- my father-in-law is a -- is an auction 15 economist. He does a tremendous amount of empirical 16 research in thinking about auction theory. So I 17 don't think just because one is a theoretical 18 auction expert means that they don't have 19 experience, and skill, and talent in analyzing 20 empirical data. 21 Q. Did professor Weinberg conduct any 22 empirical auction analysis of the -- any of the 23 auctions at issue in this case, to your knowledge? 24 MR. COLLIER: Objection; form. 25 A. I think that's a question best asked to</p>
<p style="text-align: right;">Page 147</p> <p>1 MR. COLLIER: Objection; form. 2 A. I've -- I've answered the question as 3 best I can. As I -- as I sit here right now, I do 4 not believe that's occurred. I don't recall it at 5 all and -- and I know that I haven't read it myself. 6 That's the best I can answer that question. 7 Q. The -- professor Weinberg characterized 8 himself as an auction theorist. Do you have an 9 understanding of what an auction theorist is? 10 MR. COLLIER: Objection; form. 11 A. I have an understanding of -- of the -- 12 kind of the study of auctions from -- from an 13 economist's standpoint. I understand what they do 14 and -- and I understand kind of the area of 15 economics within which auction -- auction theory 16 falls into it. 17 Q. What is "auction empirical analysis," as 18 you understand it? 19 A. As I would understand that it is looking 20 at auction data and then analyzing auction data. 21 Q. Actual real world data? 22 A. I don't -- 23 MR. COLLIER: Objection; form. 24 A. Empirical analysis would lead me to -- 25 would lead me to believe that it is real world data.</p>	<p style="text-align: right;">Page 149</p> <p>1 Dr. Weinberg. I have not -- I have not looked into 2 that one way or another so I have no basis for 3 answering that. 4 Q. Okay. Nothing that he provided to you in 5 his report indicated one way or the other whether he 6 engaged in any form of actual real world empirical 7 analysis of the matters that he opined on? 8 A. Well, as I said earlier I have read his 9 report. I don't recall, as I sit here, I don't 10 recall whether empirical analysis was part of his 11 work. He may have, he may not have. You need to 12 talk to him about that. I don't recall as I sit 13 here. 14 Q. Okay. Certainly you didn't have the 15 benefit of any empirical analysis regarding these 16 auctions that you received by way of Weinberg's 17 report. Correct? 18 MR. COLLIER: Objection; form. 19 Q. That you know of? 20 A. I think that's a -- well, if you want to 21 ask that -- I read his report and I don't recall as 22 I sit here right now whether or not there was a 23 empirical component to that report. It was a long 24 report. There's -- I just can't recall as I sit 25 here, so I can't answer that question one way or</p>

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<p style="text-align: right;">Page 150</p> <p>1 another.</p> <p>2 Q. What you can tell us is as you sit here</p> <p>3 you can't recall a single empirical piece of</p> <p>4 information that was imparted to you by your review</p> <p>5 of that report?</p> <p>6 MR. COLLIER: Objection; form.</p> <p>7 A. I don't believe that's what I said. You</p> <p>8 said a -- a single empirical piece of information.</p> <p>9 That is such a broad term. Now you've changed what</p> <p>10 we were talking about to something completely</p> <p>11 different. So I feel like it's --</p> <p>12 Q. Let me clarify it for you.</p> <p>13 A. Okay.</p> <p>14 Q. As you sit here, can you recall any</p> <p>15 report in Weinberg's report of his having conducted</p> <p>16 any empirical analysis of any of these auctions?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. I'm trying to recall one way or another</p> <p>19 as I sit here. And I know he's looked at</p> <p>20 information in this case. So I don't recall how</p> <p>21 that -- I just don't recall his report specifically</p> <p>22 enough as I sit here.</p> <p>23 Q. Okay. So you don't recall any such</p> <p>24 information as you sit here?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p style="text-align: right;">Page 152</p> <p>1 have that before you?</p> <p>2 A. I do, yes.</p> <p>3 Q. All right. Your violation count in -- in</p> <p>4 your evaluation here of the -- in your evaluation of</p> <p>5 the penalties, do you assume in your violation count</p> <p>6 that the -- that there's an assumption that has been</p> <p>7 provided to you?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. I have -- when it comes to the violation</p> <p>10 count and determining the violation count I've --</p> <p>11 I've assumed that Google's misconduct indirectly</p> <p>12 affects -- affected all open auctions within the</p> <p>13 assumed period associated with each misconduct.</p> <p>14 Q. Okay. And so you've been directed to</p> <p>15 assume that all open auctions were indirectly</p> <p>16 affected is your terminology. Right?</p> <p>17 A. I --</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I've been asked to assume based on</p> <p>20 Dr. Weinberg's report that all auctions during the</p> <p>21 period in which these misconducts occurred were</p> <p>22 affected by the claimed misconduct.</p> <p>23 Q. Okay. And did you --</p> <p>24 A. Whether -- whether they were directly</p> <p>25 targeted by the misconduct or not.</p>
<p style="text-align: right;">Page 151</p> <p>1 1 A. Yeah, I don't recall as I sit here</p> <p>2 2 whether or not that exists in his report. I read</p> <p>3 3 his report. You'd have to ask him what he relied</p> <p>4 4 upon and what he employed in his work.</p> <p>5 5 MR. GIBBS: Objection; nonresponsive.</p> <p>6 6 Q. I think you've answered the question in</p> <p>7 7 the front part.</p> <p>8 8 Okay. Paragraph 98, you say there</p> <p>9 9 that --</p> <p>10 10 THE WITNESS: Maybe this is a good</p> <p>11 11 time for lunch break.</p> <p>12 12 MR. GIBBS: Oh, yeah. That's fine.</p> <p>13 13 THE WITNESS: Since we're moving to</p> <p>14 14 another --</p> <p>15 15 MR. GIBBS: Fine with me.</p> <p>16 16 THE WITNESS: Are you guys fine with</p> <p>17 17 that?</p> <p>18 18 MR. COLLIER: Fine with me.</p> <p>19 19 THE VIDEOGRAPHER: Going off the</p> <p>20 12:46 20 record. The time is .</p> <p>21 21 (Break.)</p> <p>22 22 THE VIDEOGRAPHER: Back on the</p> <p>23 23 record. The time is 1:28.</p> <p>24 24 Q. Mr. Andrien, we were talking about</p> <p>25 25 Paragraph 98 of your original report. Do you still</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. Okay. Did you adhere to that directed</p> <p>2 assumption that Google's misconduct affected all</p> <p>3 open auctions within the assumed periods?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. I -- I assumed that Google's misconduct</p> <p>6 whether directly targeted -- whether the auctions</p> <p>7 were directly targeted or not affected all of the</p> <p>8 open auctions within the assumed period associated</p> <p>9 with each misconduct.</p> <p>10 Q. Okay. And so did you, in fact, assume</p> <p>11 that all open auctions were indirectly affected as</p> <p>12 you were directed?</p> <p>13 A. I've assumed that Google's misconduct</p> <p>14 indirectly affected all open auctions within the</p> <p>15 assumed period associated with each misconduct.</p> <p>16 Q. Okay. Can you -- do you know which or</p> <p>17 how many open auctions were actually affected?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I -- I just told you that I've assumed</p> <p>20 that all of the open auctions within the assumed</p> <p>21 period associated with each misconduct were</p> <p>22 affected. I have calculated -- I -- I do have</p> <p>23 calculations of -- of those and have put those</p> <p>24 calculations into my report.</p> <p>25 Q. All right. Are you able to testify that</p>

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<p style="text-align: right;">Page 154</p> <p>1 each and every auction transaction from 2013 to 2023</p> <p>2 was a violation of a state Deceptive Trade Practice</p> <p>3 Act?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. I am able to testify based on the</p> <p>6 assumption that I've been asked to make that</p> <p>7 Google's misconduct indirectly affected all open</p> <p>8 auctions within the assumed period associated with</p> <p>9 each misconduct. Based on that, I am able to</p> <p>10 provide a number of auctions that have been affected</p> <p>11 that are -- that are deemed violations.</p> <p>12 Q. Have you personally undertaken to</p> <p>13 determine that each and every auction transaction in</p> <p>14 that ten-year period constituted a violation of a</p> <p>15 state DTPA?</p> <p>16 MR. COLLIER: Objection; form.</p> <p>17 A. Would you repeat the question, please?</p> <p>18 MR. GIBBS: Would you read it back,</p> <p>19 please?</p> <p>20 (The requested material was read.)</p> <p>21 MR. COLLIER: Same objection.</p> <p>22 A. What I'm going to say is I've been -- I</p> <p>23 have assumed that Google's misconduct indirectly</p> <p>24 affected all open auctions within the assumed period</p> <p>25 associated with each misconduct, and -- and there's</p>	<p style="text-align: right;">Page 156</p> <p>1 Objection; form.</p> <p>2 Now you can answer.</p> <p>3 A. Now I forget what the question was.</p> <p>4 Q. Yes. The question is simply this: I</p> <p>5 understand you assumed that each and every one was</p> <p>6 affected. That's your testimony. Right?</p> <p>7 A. I'm just going to read the same sentence</p> <p>8 again.</p> <p>9 "I've assumed that Google's misconduct</p> <p>10 indirectly affected all open auctions within the</p> <p>11 assumed period associated with each misconduct."</p> <p>12 That's my assumption.</p> <p>13 Q. Okay. My next question is have you gone</p> <p>14 out and investigated and determined personally that</p> <p>15 any particular auction transaction was a violation</p> <p>16 of a DTPA?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 Q. Have you done that?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. I have assumed that those were based on</p> <p>21 Dr. Weinberg, who I understand has made that</p> <p>22 determination. So I have assumed -- assumed that</p> <p>23 those open auctions are -- are indirectly affected</p> <p>24 within the assumed period associated with each</p> <p>25 misconduct.</p>
<p style="text-align: right;">Page 155</p> <p>1 different temporal periods for each one of those</p> <p>2 misconducts.</p> <p>3 And so I -- I -- I've written in my</p> <p>4 report my -- my -- my basis for -- for the temporal</p> <p>5 components of each one of those misconducts, and</p> <p>6 within that I've calculated the number of auctions</p> <p>7 that have taken place within those periods.</p> <p>8 Q. My question is have you gone out and</p> <p>9 personally investigated to determine that each and</p> <p>10 every auction transaction in that ten-year period</p> <p>11 constituted a violation? Have you done that or have</p> <p>12 you not done that?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. I have assumed that the misconduct</p> <p>15 indirectly affected all of the auctions within the</p> <p>16 assumed period associated with its misconduct.</p> <p>17 Q. Okay. You solely assumed that. You've</p> <p>18 not gone out and actually investigated to determine</p> <p>19 if auctions on a particular date in that period was,</p> <p>20 in fact --</p> <p>21 A. I understand Dr. --</p> <p>22 Q. -- a violation?</p> <p>23 A. I'm sorry. I thought you were finished.</p> <p>24 MR. COLLIER: And I did, too, so give</p> <p>25 me just a moment.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. I understand you've assumed that based</p> <p>2 upon what you say Weinberg tells you in his report.</p> <p>3 Right?</p> <p>4 A. Dr. Weinberg has, as I understand it,</p> <p>5 determined that all open auctions have been</p> <p>6 affected. That's his work and his determination.</p> <p>7 I rely upon that work in -- in my</p> <p>8 assumption that all of those auctions have been</p> <p>9 affected.</p> <p>10 Q. Putting that assumption aside --</p> <p>11 different question -- have you personally, Jeffrey</p> <p>12 Andrien, gone and investigated to determine whether</p> <p>13 any individual transaction, auction transaction,</p> <p>14 was, in fact, a violation of a DTPA? You</p> <p>15 personally.</p> <p>16 MR. COLLIER: Objection; form.</p> <p>17 A. Yeah, I -- I -- I have performed the work</p> <p>18 that I talked about in this case, and I don't want</p> <p>19 to characterize it that it does or doesn't.</p> <p>20 Independently look at that as the work stands for</p> <p>21 itself and what I've done. I'm assuming for</p> <p>22 purposes of my -- my analysis, based on Dr. Weinberg</p> <p>23 and -- and his work, that all those open auctions</p> <p>24 have been effective.</p> <p>25 Q. Other than assuming what somebody else</p>

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<p style="text-align: right;">Page 158</p> <p>1 has told you about them, have you specifically</p> <p>2 picked a -- any single or group of auction events</p> <p>3 and investigated whether they constituted a</p> <p>4 violation? Have you done that work?</p> <p>5 A. I've done the work to understand the --</p> <p>6 the states' claims and what they claim to be a --</p> <p>7 a -- the misconduct at issue. I understand how</p> <p>8 those different conducts are at play within the --</p> <p>9 the auctions.</p> <p>10 And so I do have independent work that</p> <p>11 I've performed to understand why auctions would be</p> <p>12 considered violations. And I've been asked to</p> <p>13 assume that every auction, every open auction has</p> <p>14 been indirectly affected within the assumed period</p> <p>15 associated with each misconduct, so...</p> <p>16 Q. Can you -- can you identify, as you sit</p> <p>17 here, a single transaction that you have gone out</p> <p>18 and investigated and determined, independently of</p> <p>19 what you've been asked to assume, that it was a</p> <p>20 violation of any of the DTPAs? Have you done that?</p> <p>21 A. Well, I've looked at the auction database</p> <p>22 that was -- that was produced in this case by</p> <p>23 Google. And I understand, based on the information</p> <p>24 I reviewed in this case, that [REDACTED]</p> <p>[REDACTED]</p>	<p style="text-align: right;">Page 160</p> <p>1 A. I think I just answered that question.</p> <p>2 I'd repeat my same answer. I've done the work in</p> <p>3 this case --</p> <p>4 Q. Your answer was nonresponsive, I'll tell</p> <p>5 you that. Go ahead?</p> <p>6 MR. COLLIER: He wasn't done</p> <p>7 speaking.</p> <p>8 Q. Go ahead?</p> <p>9 A. Thank you.</p> <p>10 I've done the work, independent work in</p> <p>11 this case to understand and to look for whether or</p> <p>12 not you could identify whether these programs were</p> <p>13 run on any individual auction. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] I then</p> <p>21 looked independently into understanding how the</p> <p>22 auctions work, how those programs work,</p> <p>23 understanding how those programs would -- would</p> <p>24 manipulate those auctions, and therefore I have an</p> <p>25 understanding that those are violations</p>
<p style="text-align: right;">Page 159</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>3 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>10 I do understand generally how the</p> <p>11 auctions work. I do understand generally how these</p> <p>12 programs work. And I do understand that generally</p> <p>13 these auctions -- and I've done the independent work</p> <p>14 to -- to understand that auctions would be impacted</p> <p>15 by these -- by these misconducts. So I have done</p> <p>16 independent work to determine that auctions would be</p> <p>17 affected.</p> <p>18 I have asked to assume that -- that</p> <p>19 Google's misconduct indirectly affected all open</p> <p>20 auctions within the assumed period associated with</p> <p>21 this misconduct.</p> <p>22 Q. Can you identify a single transaction,</p> <p>23 auction transaction on a day, or five of them, that</p> <p>24 you claim you have confirmed were a violation of the</p> <p>25 DTPAs?</p>	<p style="text-align: right;">Page 161</p> <p>1 independently.</p> <p>2 [REDACTED]</p> <p>3 [REDACTED] So I understand to the</p> <p>4 extent that that conduct occurred, it's going to</p> <p>5 affect auctions. I've done that independent work.</p> <p>6 I've looked to Dr. Weinberg to -- to -- to rely on</p> <p>7 his opinion that -- that Google's misconduct</p> <p>8 indirectly affected all open auctions within the</p> <p>9 assumed period associated with each misconduct.</p> <p>10 MR. GIBBS: Objection; nonresponsive.</p> <p>11 Q. Your -- your answer is [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Right?</p> <p>17 A. I -- I --</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. -- I think that's a mischaracterization</p> <p>20 of what I said. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] I didn't say whether</p> <p>23 or not they were affected individually.</p> <p>24 I [REDACTED]</p> <p>[REDACTED]</p>

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1 [REDACTED]
2 [REDACTED]. I know that
3 manipulated -- manipulation -- the -- the type of
4 manipulation that was -- was performed by these
5 misconducts. And so I know auctions were
6 manipulated and therefore violations.
7 And I also understand generally how
8 auctions work and how -- and how there's feedback
9 loops, because this is a repeated game for many of
10 the participants. And I understand that those
11 feedback loops would be -- would be -- would be --
12 the information wouldn't -- would have been
13 manipulated based -- the -- the feedback loops that
14 they would get would be manipulation -- manipulated,
15 and that would affect other auctions.
16 So I understand that and I've done the
17 work to understand that independently. And,
18 therefore, I do have a basis for understanding that
19 these auctions would be considered a violation. And
20 I have relied on Dr. Weinberg to -- to, in his
21 conclusion and opinion that Google's misconduct
22 indirectly affected all open auctions within the
23 assumed period associated with each misconduct.
24 MR. GIBBS: Objection; nonresponsive.
25 Q. [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 Is that your testimony?
4 MR. COLLIER: Objection; form.
5 A. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 Q. [REDACTED]
17 [REDACTED]
18 [REDACTED] Right?
19 MR. COLLIER: Objection; form.
20 [REDACTED]
21 As I've told -- as I've said in my report, my
22 opinion is based on the assumption that Google's
23 misconduct indirectly affected all open auctions
24 within the assumed period associated with each
25 misconduct.

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1 MR. GIBBS: Objection; nonresponsive.
2 Q. Did -- was that information available to
3 anyone else in connection with the -- the -- their
4 evaluations, to your knowledge?
5 MR. COLLIER: Objection; form.
6 A. Which information?
7 [REDACTED]
8 [REDACTED]
9 A. [REDACTED]
10 [REDACTED]
11 Q. Okay.
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 But I understand that they were running
19 these -- these programs throughout the time periods
20 that I have -- I have put forth in each one of my --
21 each one -- related to each one of the conducts.
22 MR. GIBBS: Objection; nonresponsive.
23 Q. And so that is the reason that your
24 report does not have that level of detail, that is,
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 MR. COLLIER: Objection; form.
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 Q. Therefore, you did not --
9 MR. COLLIER: I don't -- counsel, I
10 don't think he was done.
11 Were you done, Mr. Andrien?
12 THE WITNESS: I was -- I was still in
13 the middle of my -- my answer, but...
14 A. So what I -- what I was saying was that
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Now, there's information that is
20 available to understand how the auctions work, how
21 the programs that manipulate the auctions work, how
22 they manipulate the auctions, to understand that
23 information flows back to the participants of the
24 auction, to understand that this -- these auctions
25 are repeated gain and that participants engage in

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<p style="text-align: right;">Page 166</p> <p>1 these auctions multiple times over and over again.</p> <p>2 And so with that understanding, one is</p> <p>3 able to conclude that these would have impacts</p> <p>4 throughout this auction environment and -- and --</p> <p>5 and I've done the work to understand that, but I'm</p> <p>6 relying upon Dr. Weinberg's conclusion and -- and --</p> <p>7 and opinion that -- that Google's misconduct</p> <p>8 indirectly affected all open auctions with the</p> <p>9 assumed period -- within the assumed period</p> <p>10 associated with each misconduct.</p> <p>11 Q. And you have not been able to -- for the</p> <p>12 reasons you've just expressed, [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED] True?</p> <p>16 MR. COLLIER: Objection; form.</p> <p>17 A. I disagree with that characterization. [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 But I can determine, based on Dr. Weinberg's work</p> <p>22 and based on my understanding, that the auctions --</p> <p>23 that auctions were impacted.</p> <p>24 Q. Do you know whether each and every one of</p> <p>25 the auctions was deceptive? Have you done any</p>	<p style="text-align: right;">Page 168</p> <p>1 involved in the auction were? Have you done that?</p> <p>2 A. I have not specifically spoken to an</p> <p>3 advertiser or a publisher that has -- that has</p> <p>4 engaged in -- in the auctions at issue in this case.</p> <p>5 I have not gone in -- and talked to any advertiser</p> <p>6 or publisher, but that was not necessary to do to</p> <p>7 reach the conclusions that I've reached and --</p> <p>8 and -- and understand how these auctions work.</p> <p>9 There's enough information in the record for me to</p> <p>10 glean that information.</p> <p>11 MR. GIBBS: Objection; nonresponsive.</p> <p>12 Q. So the answer to my question is you can't</p> <p>13 point to a single publisher or advertiser, by name</p> <p>14 or by the date of a particular auction, that was</p> <p>15 deceived according to your personal investigation</p> <p>16 that produced that name. True?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. I don't believe that's true the way you</p> <p>19 phrased that question, though.</p> <p>20 Q. Have you gone out and talked to a single</p> <p>21 publisher or advertiser and asked them about a</p> <p>22 single election -- or auction that they've been</p> <p>23 involved in and whether they were deceived by any of</p> <p>24 these facts?</p> <p>25 MR. COLLIER: Objection; form.</p>
<p style="text-align: right;">Page 167</p> <p>1 personal investigation about any specific auction to</p> <p>2 determine whether it was deceptive or not?</p> <p>3 A. I would say I've done a lot of work in</p> <p>4 this case to understand whether or not those would</p> <p>5 be deceptive based on my understanding of the</p> <p>6 auctions, the participants, the programs that were</p> <p>7 run, the feedback loops that would happen. I</p> <p>8 generally have a -- I believe I have a strong</p> <p>9 understanding of all that. So I've done all that</p> <p>10 independent work. I've looked at Dr. Weinberg's</p> <p>11 report. I understand what he has concluded based on</p> <p>12 his work and that -- that -- that is consistent with</p> <p>13 my understanding of how -- my independent work and</p> <p>14 how this works. And based on his work as an auction</p> <p>15 theorist or an auction expert, I have relied upon</p> <p>16 his work which is consistent with my own independent</p> <p>17 work. But I've relied upon him to reach the</p> <p>18 conclusion or -- or -- or to assume that Google's</p> <p>19 misconduct indirectly affected all open auctions</p> <p>20 within the assumed period associated with each</p> <p>21 misconduct.</p> <p>22 MR. GIBBS: Objection; nonresponsive.</p> <p>23 Q. Have you gone and talked to a single</p> <p>24 seller or buyer in any of these auctions to</p> <p>25 determine what their understanding of the mechanics</p>	<p style="text-align: right;">Page 169</p> <p>1 A. I have not spoken to a particular</p> <p>2 advertiser or publisher and asked them that. But</p> <p>3 I've looked through the record in this case. I've</p> <p>4 read deposition testimony in this case. I've --</p> <p>5 I've understood how the auctions work and the</p> <p>6 programs work and I understand -- well -- or -- or</p> <p>7 statements Google has made about the auctions and --</p> <p>8 and so based on all that work, I can conclude that</p> <p>9 there has been advertisers and publishers deceived.</p> <p>10 I don't have to call them up and ask them. I can do</p> <p>11 it based on the record that was produced.</p> <p>12 MR. GIBBS: Objection; nonresponsive.</p> <p>13 Q. Somebody else will determine the</p> <p>14 significance of this.</p> <p>15 My question is just, simply, can you name</p> <p>16 a single advertiser or a single publisher that was</p> <p>17 deceived in a particular transaction auction on a</p> <p>18 particular date and auction from your own work or</p> <p>19 investigation? Can you identify that person or</p> <p>20 company?</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 A. As I sit here right now, I don't have the</p> <p>23 information in front of me to identify a particular</p> <p>24 name and a particular auction. I have looked at a</p> <p>25 database of auctions. So I understand that [REDACTED]</p>

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<p style="text-align: right;">Page 170</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] And as I said before, I 5 understand the technologies. Like, I understand 6 the -- kind of the environment, the auctions, the 7 way the -- the participants engage within the 8 auctions. I understand the misconduct that's 9 alleged, and, therefore, I have an understanding 10 that the auctions have been deceptive and -- and the 11 participants have been deceived. 12 Q. But you can't give us a single name of a 13 publisher or an advertiser who have -- will come in 14 and that you've identified by name or company and 15 say, I've been deceived, can you? 16 MR. COLLIER: Objection; form. 17 A. I have -- I have not read a deposition or 18 anything from an advertiser or publisher that I 19 recall as I sit here that -- that says that that 20 individual advertiser or publisher has been 21 deceived. However, I do understand that each 22 advertiser and publisher who's engaged with this 23 auction technology has been deceived. I understand 24 why and I understand the -- the -- the manipulations 25 that have occurred based on these programs and why</p>	<p style="text-align: right;">Page 172</p> <p>1 And so, therefore, that's how I get the 2 "indirectly." Whether they were directly targeted 3 or not, they were all at least indirectly affected. 4 Q. What do you mean by "indirectly 5 affected"? 6 A. What I mean by that is, for example, if 7 the -- if Bernanke didn't run on a specific auction, 8 it doesn't -- that -- that auction can still be 9 indirectly affected because of Bernanke during the 10 period that Bernanke ran. 11 Q. Why? 12 A. I -- I'm trying to describe this. I'll 13 try again. 14 Understanding the auction mechanisms and 15 these programs to manipulate auctions, understanding 16 the feedback loops from these auctions, it goes back 17 to the advertisers and -- and -- and the -- the 18 publishers. I understand that's going to impact 19 their future behavior and, therefore, the -- the -- 20 the auctions that -- the manipulations that happen 21 on one auction would impact -- would impact the 22 participants in auctions that don't even run that -- 23 that program at the time because of -- because of 24 all the -- the -- the feedback loops I've just 25 discussed.</p>
<p style="text-align: right;">Page 171</p> <p>1 they would be deceptive and how they are deceptive. 2 And, therefore, I can conclude that they've been 3 deceived without having to name them individually. 4 Q. And that's the reason you haven't gone to 5 talk to a single one of the publishers or 6 advertisers personally, have you? 7 MR. COLLIER: Objection; form. 8 A. As I previously testified to, I have not 9 gone to talk to them. I did not need to talk to 10 them to reach the conclusions that I've reached 11 and -- and do the work that I've done in this case. 12 It wasn't -- it would not have -- have altered or -- 13 or changed my opinions. 14 Q. You were indicating in your report that 15 you were directed to assume Google's alleged 16 misconduct indirectly affected all the open 17 auctions. Do I understand that correctly? 18 A. You do. And I say below, just to put a 19 finer point on it, and I said: I've been asked to 20 assume based on Dr. Weinberg's report that all 21 auctions during the period in which RPO DRS 22 Version 1, DRS Version 2 and Bernanke misconducts 23 were active were affected by the claimed misconduct, 24 whether they were directly targeted by the 25 misconduct or not.</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Does the -- does your assumption that all 2 the auctions were affected, does that mean that the 3 auction participants were worse off because of the 4 mechanic or feature that's at issue? 5 MR. COLLIER: Objection; form. 6 A. I understand that there is harm done to 7 the participants and I've discussed that harm in my 8 report. I don't believe it necessarily means that 9 each participant was harmed every time, but they -- 10 they are harmed in the sense that they are -- they 11 are developing their auction strategies based on 12 information that they're receiving from tainted 13 auctions that's not accurate. 14 Q. Are -- are you aware or are you saying 15 that every one of them was worse off financially as 16 a result of any of these mechanics? 17 A. I'm -- I'm not saying that everyone was 18 worse off financially because of these mechanics. 19 Q. Okay. There are -- from that perspective 20 in terms of financially, there are people or 21 businesses included within the total violations or 22 transactions you've counted, there are people, 23 therefore, that have not been rendered worse off. 24 Would you agree with that? 25 MR. COLLIER: Objection; form.</p>

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<p style="text-align: right;">Page 174</p> <p>1 Q. From a financial perspective?</p> <p>2 MR. COLLIER: Objection; form.</p> <p>3 A. I -- I don't have the -- the -- the</p> <p>4 insight to reach that conclusion that you just put</p> <p>5 forth. I do know that there are situations where --</p> <p>6 where, for example, it's kind of robbing Peter to</p> <p>7 pay Paul where -- where you are taking surplus from</p> <p>8 one participant and providing it to another</p> <p>9 participant. And, therefore, in that situation, one</p> <p>10 might be benefit, and one might be harmed.</p> <p>11 But the -- as I said before, the -- the</p> <p>12 manipulations affect how people engage --</p> <p>13 participants engage with the technology. And so</p> <p>14 from that standpoint, the whole ecosystem is</p> <p>15 affected.</p> <p>16 Q. Has anyone to your knowledge determined</p> <p>17 whether any ad seller or publisher was financially</p> <p>18 worse off because of reserve price optimization?</p> <p>19 MR. COLLIER: Objection; form.</p> <p>20 A. Would you please repeat the question?</p> <p>21 Q. Yes, sir. Let's start with you. Have</p> <p>22 you personally determined whether a single ad seller</p> <p>23 or a single publisher was worse off financially</p> <p>24 because RPO made sure they did not sell their ad</p> <p>25 space too cheaply?</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 Q. In a transaction?</p> <p>3 A. I have not identified a particular name</p> <p>4 of an advertiser that's been harmed. But I do</p> <p>5 understand how reserve price optimization has been</p> <p>6 employed. And I do understand the mechanism by</p> <p>7 which that -- that by definition harms advertisers.</p> <p>8 It is -- it is taking surplus from advertisers</p> <p>9 and -- and -- and it's increasing that surplus by</p> <p>10 definition.</p> <p>11 Q. Same question about dynamic revenue</p> <p>12 sharing. Can you, sir, point to a single publisher</p> <p>13 or advertiser that has been financially harmed in</p> <p>14 a -- in any single or group of transactions in</p> <p>15 auctions by DRS?</p> <p>16 A. And I will give the same answer. While I</p> <p>17 understand -- while I have not identified any</p> <p>18 individual named publisher or advertiser -- excuse</p> <p>19 me -- that's been -- that's been affected. I</p> <p>20 have -- I have an understanding of how the program</p> <p>21 works. And as I've listed in the report, an</p> <p>22 understanding of how those programs would -- would</p> <p>23 negatively or could negatively impact publishers</p> <p>24 and -- publishers and -- and advertisers.</p> <p>25 Q. You understood as you just said how they</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. As I understand the way RPO was -- was</p> <p>3 employed, that the reserve price would be</p> <p>4 manipulated and by doing so that would cause a</p> <p>5 financial benefit to Google. They would, for</p> <p>6 example, I talk about this in -- in -- I have a</p> <p>7 chart in my report. Let me see if I can find it.</p> <p>8 It's Figure 3 for reserve price</p> <p>9 optimization. And so you can see if the reserve</p> <p>10 price is manipulated to that would have been below</p> <p>11 the second bid to place above the second bid, then</p> <p>12 by definition the -- the advertiser surplus is being</p> <p>13 destroyed here and therefore they are harmed</p> <p>14 financially.</p> <p>15 Q. Have you gone out or anyone else to your</p> <p>16 knowledge gone out and identified a single publisher</p> <p>17 or advertiser that has financially suffered injury</p> <p>18 from reserve price optimization?</p> <p>19 MR. COLLIER: Objection.</p> <p>20 Q. A single one?</p> <p>21 MR. COLLIER: Objection; form.</p> <p>22 A. Would you please repeat the question?</p> <p>23 Q. Can you identify, have you identified by</p> <p>24 name, a single publisher or a single advertiser that</p> <p>25 has been financially injured or harmed by RPO?</p>	<p style="text-align: right;">Page 177</p> <p>1 could be impacted, is that the word you just used,</p> <p>2 could?</p> <p>3 A. I --</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. I did use that word. But I also have</p> <p>6 talked extensively about how that manipulating</p> <p>7 auctions affects participant's information. And</p> <p>8 their -- their information they get from</p> <p>9 participating in auctions is now tainted and -- and</p> <p>10 skewed. It's not truthful information. And that's</p> <p>11 going to impact their future interactions with</p> <p>12 the -- with future auctions.</p> <p>13 Q. Have you, in fact, determined that, in</p> <p>14 fact, a single publisher or advertiser was, not</p> <p>15 could be, was in fact harmed financially by any of</p> <p>16 these alleged misrepresentations or mechanics?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. Could you repeat the question please?</p> <p>19 Q. Have you, in fact, determined not whether</p> <p>20 somebody could have been affected, as you've</p> <p>21 indicated in your report, have you gone out and</p> <p>22 determined and identified a single advertiser or</p> <p>23 publisher that was, in fact, injured or harmed</p> <p>24 financially by any of these mechanics?</p> <p>25 MR. COLLIER: Objection; form.</p>

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<p style="text-align: right;">Page 178</p> <p>1 A. I'm going to give the same answer that</p> <p>2 while I have not identified by name a single</p> <p>3 publisher or advertiser that was financially harmed,</p> <p>4 I do understand how the programs were implemented</p> <p>5 and understand how that implementation would cause</p> <p>6 harm to publishers and advertisers who are</p> <p>7 participating in this -- in -- in -- in this market.</p> <p>8 Q. You have no names that you can give us.</p> <p>9 True?</p> <p>10 MR. COLLIER: Objection; form.</p> <p>11 A. I have not identified a name because it</p> <p>12 wasn't necessary to do that for the work that I'm</p> <p>13 performing. It's not -- the name of one of these</p> <p>14 isn't relevant to my determining what an appropriate</p> <p>15 penalty is.</p> <p>16 MR. GIBBS: Objection; nonresponsive.</p> <p>17 Q. What is -- what is your understanding of</p> <p>18 a truthful auction? Do you have an understanding of</p> <p>19 that concept?</p> <p>20 A. I do. It's -- my understanding is</p> <p>21 detailed or discussed in -- in Paragraph 40 and 41.</p> <p>22 Q. Is an auction truthful if the bidders</p> <p>23 optimally bid their true values rather than shading</p> <p>24 their bids?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p style="text-align: right;">Page 180</p> <p>1 a certain price.</p> <p>2 Q. Do you know of a concept involved in</p> <p>3 this -- in these auctions called the "threshold</p> <p>4 price payment rule"?</p> <p>5 A. I'd have to go back and refresh my</p> <p>6 memory. As I sit here, I don't recall exactly what</p> <p>7 that is, but it sounds familiar to me. I would just</p> <p>8 have to refresh my recollection.</p> <p>9 Q. Okay. In May of 2016, Google Ads</p> <p>10 transitioned advertisers using auto bidding that is</p> <p>11 cost per sale to a threshold price payment rule.</p> <p>12 Do you agree with that statement?</p> <p>13 A. Would you repeat the question, please?</p> <p>14 Q. Yes, sir. In May of 2016, Google Ads</p> <p>15 transitioned advertisers using auto bidding, that is</p> <p>16 cost per sale, to a threshold price payment rule.</p> <p>17 Are you aware of that fact?</p> <p>18 A. That sounds familiar. I don't recall the</p> <p>19 dates as I sit here or the specifics. I'd have to,</p> <p>20 again, refresh my memory on that.</p> <p>21 Q. I'm not holding you to the date, but if</p> <p>22 it's in May of 2016, were you familiar with that</p> <p>23 fact?</p> <p>24 A. As I said, I would have to go back and</p> <p>25 refresh my recollection.</p>
<p style="text-align: right;">Page 179</p> <p>1 A. Is an auction truthful?</p> <p>2 Q. Yes.</p> <p>3 A. Not if it's being manipulated, it's not</p> <p>4 truthful.</p> <p>5 Q. Putting aside the manipulation question.</p> <p>6 If bidders have bid their true values, is that a --</p> <p>7 a truthful auction?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. That's a hypothetical. I don't know how</p> <p>10 to answer without more information. It could be a</p> <p>11 true -- a truthful auction. It could be a</p> <p>12 manipulated auction.</p> <p>13 Q. Okay.</p> <p>14 A. It would be -- there's -- there's --</p> <p>15 there's not enough information for me to answer that</p> <p>16 question.</p> <p>17 Q. Is a -- an auction where the winning</p> <p>18 bidder is charged a threshold price a truthful</p> <p>19 auction?</p> <p>20 A. I'd give the same answer. There's just</p> <p>21 not enough information for me to answer that</p> <p>22 question.</p> <p>23 Q. What's a threshold price?</p> <p>24 A. A threshold would be a -- a floor amount,</p> <p>25 like a -- it has to be at least this price, at least</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. You can't answer that question as you sit</p> <p>2 here?</p> <p>3 A. There's a -- a tremendous amount of</p> <p>4 information that I've received in this case. I'm --</p> <p>5 not -- I understand it's not supposed to be a memory</p> <p>6 test. As I sit here I don't under -- I don't recall</p> <p>7 specifically the details. I would like to refresh</p> <p>8 my memory. If you want to put a document in front</p> <p>9 of me to -- to refresh my recollection, I'd be happy</p> <p>10 to look at it.</p> <p>11 Q. Did you -- did the implementation of</p> <p>12 the -- a threshold price payment rule by Google, did</p> <p>13 you take that into account in arriving at your --</p> <p>14 your -- the civil -- civil penalties -- penalties in</p> <p>15 this case?</p> <p>16 A. I've taken into account as I've detailed</p> <p>17 in my report, when these manipulative conducts have</p> <p>18 occurred, when they stopped. And so I've looked at</p> <p>19 that.</p> <p>20 Now, as I said, you'd have to refresh my</p> <p>21 recollection about that specific issue that you're</p> <p>22 talking about. And I'm -- and I'm happy to look at</p> <p>23 something. But I've -- I've been very specific</p> <p>24 of -- of why I picked the -- the temporal component</p> <p>25 of my analysis that I have for each one of the</p>

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<p style="text-align: right;">Page 182</p> <p>1 different conducts and -- and all the work that I've</p> <p>2 done to assess penalties, appropriate penalties</p> <p>3 associated with each one of those conducts.</p> <p>4 Q. Well, putting --</p> <p>5 A. I'm happy to take a look at it, but if</p> <p>6 you want to refresh my recollection --</p> <p>7 Q. Just tell us how does your theory take</p> <p>8 into account, if it does, threshold price payments?</p> <p>9 How did you account for that when you were arriving</p> <p>10 at your 7 to \$20 billion range of penalties?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. And if you -- as I said -- as I sit here</p> <p>13 I need to have my memory refreshed about that</p> <p>14 specific conduct. And if I -- that specific change</p> <p>15 as you call it. I would like to look at it and</p> <p>16 understand it better than I can recall as I sit here</p> <p>17 right now. But what I have done is I've looked at</p> <p>18 the conducts -- the alleged misconducts at issue in</p> <p>19 this case. I've looked at the time period for which</p> <p>20 those conducts ran and I think I've been very</p> <p>21 conservative in my selection of those time periods.</p> <p>22 And I've assessed the number of auctions that have</p> <p>23 occurred within those time periods. And I've</p> <p>24 quantified a penalty based on those assessments.</p> <p>25 So I can't tell without getting my memory</p>	<p style="text-align: right;">Page 184</p> <p>1 A. I'm going to give the same answer I've</p> <p>2 given every single time you've asked ask this</p> <p>3 question. I have described exactly what I've done</p> <p>4 in my work to get to the -- the time components for</p> <p>5 the auctions, how I've quantified the auctions</p> <p>6 within those time components, and how I've reached</p> <p>7 my conclusions based on the number of auctions and</p> <p>8 the rest of the analysis I've done.</p> <p>9 If you want to refresh my recollection</p> <p>10 of -- of this threshold change that you're</p> <p>11 discussing, I will tell you how that impacts, if it</p> <p>12 impacts, or if it's irrelevant to what I have done.</p> <p>13 But as I sit here right now, I don't recall the</p> <p>14 details sufficient enough to answer that question.</p> <p>15 Q. Okay. Do you recall anything about</p> <p>16 threshold price, payment, that concept, as it</p> <p>17 applies in this context?</p> <p>18 A. I -- that -- that sounds like something</p> <p>19 I've seen before. I'd want to have my -- my memory</p> <p>20 refreshed on it.</p> <p>21 Q. Okay. May have seen it. It sounds like</p> <p>22 something you may have seen. Right?</p> <p>23 A. As I said, it sounds like something I've</p> <p>24 seen before. I would like to have my memory</p> <p>25 refreshed. If you want to show me a document and</p>
<p style="text-align: right;">Page 183</p> <p>1 refreshed how that fits into -- into what I've done</p> <p>2 or -- or if it's relevant to what I've done without</p> <p>3 having my memory refreshed on it.</p> <p>4 Q. Can you tell us anything about how the</p> <p>5 introduction of threshold price payment impacted</p> <p>6 your 7 to \$20 billion figures at -- in any way? Do</p> <p>7 you have any idea as you sit here?</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. I'm -- I'm going to have the same answer</p> <p>10 that I've had this whole time. And that is I can</p> <p>11 tell you exactly what I've done, how I've done it,</p> <p>12 how I've picked the time components of what I've</p> <p>13 done, why I've reached the conclusions I've reached.</p> <p>14 And if you want to refresh my memory about this</p> <p>15 threshold change, I can review it and -- and answer</p> <p>16 your question. But as I sit here, I don't have</p> <p>17 the -- the -- the recall of that specific program</p> <p>18 to -- to answer your question.</p> <p>19 Q. Okay. So as you sit here, you can't</p> <p>20 recall any way in which you have taken into account</p> <p>21 in arriving at your 7 to \$20 billion numbers of the</p> <p>22 impact of threshold price payment?</p> <p>23 A. I --</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">Page 185</p> <p>1 refresh my memory, I'm happy to talk about it in</p> <p>2 more detail.</p> <p>3 Q. Did the --</p> <p>4 THE WITNESS: Is this a good time for</p> <p>5 a restroom break?</p> <p>6 MR. GIBBS: Sure.</p> <p>7 THE VIDEOGRAPHER: Going off the</p> <p>8 record. The time is 2:12.</p> <p>9 (Break.)</p> <p>10 THE VIDEOGRAPHER: Back on the</p> <p>11 record. The time is 2:27.</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 A. You're -- you're wrong on that.</p> <p>17 Q. Okay?</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. That's what I thought at first, but I</p> <p>22 talked myself out of that. [REDACTED]</p> <p>23 And then that's the -- the low or minimum</p> <p>24 part of your per violation penalty value. Right?</p> <p>25 A. Given the violation counts that I have in</p>

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1 my report, that would be the low end of the -- of
2 the -- of the penalty range, per violation penalty
3 range.
4 Q. And the high -- high or maximum under
5 your analysis, [REDACTED]
6 [REDACTED]. Right?
7 A. That's right, given the number of
8 violation counts that I've quantified in my opening
9 report.
10 Q. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 A. Sure. Let me explain how I got there.
15 So when I performed my work in this case,
16 I looked at the -- the statutes and understood
17 the -- the penalty ranges for the states at issue in
18 this case, the plaintiff states. And when I
19 determined the number of violations, the first thing
20 I did is say, okay, well, what would this mean if --
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] Then I realized, well,
24 that's -- that's a -- that's a big number. I don't
25 think that would be an appropriate penalty.

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED] I came to the same
4 conclusion, [REDACTED].
5 Given just the incredible number of
6 violations here, we're -- we're -- we're talking
7 about such huge scope and scale. So I said, well,
8 what is a penalty -- [REDACTED]
9 [REDACTED]
10 And I said, well -- well, that gets to,
11 like [REDACTED]. And I still believe that's --
12 that's too high. So I -- I -- I looked at different
13 violation amounts, and then determined what you get
14 from those amounts, and then kind of viewed the
15 results from that work holistically within the --
16 the factors that I was asked to consider.
17 And -- and based on all of that work and
18 analysis, that's how I get to my range. And so it's
19 a range that I determined through my work, analysis,
20 education, training, experience, looking at the
21 record produced in this case, doing independent
22 research. And all of that work is how I determined
23 that given the violation counts that I've
24 quantified, that would be an appropriate per
25 violation penalty range to assess in this matter,

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1 based on the factors that I've addressed.
2 Q. So in order -- in answer to the question
3 who came up with the range per violation, that was
4 Jeffrey Andrien. Right?
5 A. I came up with that range based on the
6 work that I performed and just described.
7 Q. How did you conclude that [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]?
11 A. Sure. So as I said, I -- I kind of
12 explained how I analyzed the different results. And
13 then when I looked at the various analyses that I've
14 undertaken to try to understand Google's benefit
15 from engaging in this activity, I've applied a
16 number of what I would call conservative assumptions
17 to -- to -- to conclude -- to reach the conclusions
18 that I've concluded.
19 So, for example, I looked at the
20 historical benefits that Google has derived or tried
21 to look at the incremental benefits that Google
22 derived from this misconduct, that the information
23 required to do that type of calculation was not
24 retained by Google and not provided in this case for
25 me to be able to do that type of incremental

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1 analysis.
2 So I looked at various results from
3 Google, financial results in different aspects of
4 their business. I looked at the display advertising
5 portion of their business, which is where this
6 AdTech stack resides. I looked at the components
7 that Google said in its interrogatory, I related to
8 its -- it's AdTech stack.
9 And I looked at the -- the results from
10 Google P&L related to those aspects of its business.
11 I looked at its overall business. I looked -- I
12 analyzed those into the -- by looking at kind of a
13 portion of those to the 17 point of states.
14 I understood and did work to understand
15 how this -- this conduct is -- would not only create
16 direct benefits, but there would be a snowball
17 effect that would create indirect benefits
18 throughout Google's not just advertising stack,
19 AdTech stack, but throughout its entire
20 organization.
21 And so based on all of that analysis, I
22 feel -- and thinking about the future benefits to
23 Google, the snowball effect, the profitability of
24 Google, how important this part of the business is
25 to its overall success, looking at its success in

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<p>1 this portion of the business, analyzing that on a --</p> <p>2 or allocating that to a per state level, I've</p> <p>3 concluded, based on that, that Google's benefit from</p> <p>4 doing this is -- is -- is well above \$7 billion.</p> <p>5 And, therefore, [REDACTED]</p> <p>6 and determined that this is a reasonable lower end</p> <p>7 range based on kind of deterrence theory, based on</p> <p>8 my analysis, education, training, and experience.</p> <p>9 And I concluded the same for the upper end.</p> <p>10 Now, I don't think the data is sufficient</p> <p>11 to -- to get so precise and granular that you can</p> <p>12 pick within that range what is the appropriate</p> <p>13 [REDACTED] but I believe</p> <p>14 this is a reasonable, appropriate, reliable range,</p> <p>15 given all of the information I've -- I've -- I've</p> <p>16 received and all the analysis that I've done.</p> <p>17 Q. And so you concluded -- you personally</p> <p>18 picked as the maximum penalty \$21.81 billion?</p> <p>19 Right?</p> <p>20 A. 21.81 billion. That's correct.</p> <p>21 Q. And then on the high side that was your</p> <p>22 maximum. Right?</p> <p>23 A. That's -- I said this is an appropriate</p> <p>24 range. I've also said that I believe the jury,</p> <p>25 considering other facts, might find that there's a</p>	<p>1 such a penalty on Google and its ability to pay, and</p> <p>2 also consider other past violations and settlements</p> <p>3 and other...</p> <p>4 Q. And the period of time that you're</p> <p>5 calculating penalties for is ten years. Right?</p> <p>6 A. Well, it varies for each misconduct. So</p> <p>7 I have in my report -- if we want to go -- let's</p> <p>8 just go to the right page here.</p> <p>9 If you look at Page 76 of my -- I believe</p> <p>10 this is my initial report -- initial report, you</p> <p>11 will see that I've -- the -- the -- the period of</p> <p>12 time for each one of the misconducts. So it varies</p> <p>13 by misconduct.</p> <p>14 Q. But the inclusive -- total inclusive</p> <p>15 period is ten years. True?</p> <p>16 A. The total inclusive period starts</p> <p>17 November 2020 -- November 20th, 2000 --</p> <p>18 November 11th, excuse me, 2013, through the present,</p> <p>19 at the time I issued these reports.</p> <p>20 Q. So '23?</p> <p>21 A. I issued it in '24.</p> <p>22 Q. '24. Okay?</p> <p>23 A. I believe, yeah.</p> <p>24 Q. So through the end of '23?</p> <p>25 A. Through -- through the present, based on</p>
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<p>1 basis for going higher than that range.</p> <p>2 But I -- and I've even tested whether</p> <p>3 Google could pay a penalty higher than that range.</p> <p>4 But based on my work, I thought that was a</p> <p>5 reasonable, appropriate range, given the factors</p> <p>6 that I've considered, based on the analysis and work</p> <p>7 I've done.</p> <p>8 Q. And the low -- the minimum that you have</p> <p>9 concluded is appropriate against Google is</p> <p>10 7.2 million -- billion?</p> <p>11 A. I believe the exact number there was</p> <p>12 7. -- let me just give it to you so we're --</p> <p>13 (Pause.)</p> <p>14 7.27.</p> <p>15 Q. Okay. So that was the minimum that you</p> <p>16 concluded was the appropriate deterrent penalty --</p> <p>17 deterrence-based penalty, I should say. Right?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. Well, I believe my -- my work is -- has</p> <p>20 multiple components here. There's a -- there's a</p> <p>21 penalty component to it, a punishment component to</p> <p>22 it, but one that has to also deter Google and other</p> <p>23 future violators from engaging in -- in misconduct.</p> <p>24 And it's got to be one that Google, I</p> <p>25 think, can -- I had to analyze the impact of -- of</p>	<p>1 the information that I had available to me.</p> <p>2 Q. Okay. A little over ten years?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 Now, would I find in your, the Jeffrey</p> <p>6 Andrien's, view of double, say, all of Google's</p> <p>7 AdTech-related profits, would that be unreasonably</p> <p>8 low as a penalty, in your opinion?</p> <p>9 A. Double of -- you'd have to tell me what</p> <p>10 that amount is. Double of all of Google's AdTech</p> <p>11 profits?</p> <p>12 Q. Yeah.</p> <p>13 A. You'd have to tell me what that amount is</p> <p>14 and I can -- I can let you know.</p> <p>15 Q. All right. Well, let me ask you, have</p> <p>16 you calculated or attempted to calculate the profits</p> <p>17 generated by the advertising technology division of</p> <p>18 Google over that period of time?</p> <p>19 A. I've looked at various different</p> <p>20 profitability. So let me -- let me go find exactly</p> <p>21 when he talked numbers here.</p> <p>22 So if you look at -- some of these</p> <p>23 calculations might be in my work papers and not</p> <p>24 specifically in the report.</p> <p>25 Q. Do you have a Table 1 in your original</p>

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<p>1 report?</p> <p>2 A. What page is that? I'm sure I have a</p> <p>3 Table 1. I just don't know what page.</p> <p>4 Q. Well, let's look at your rebuttal report.</p> <p>5 It's Updated Table 1. Yeah, it's toward the very</p> <p>6 end of your rebuttal. It's the appendix after your</p> <p>7 materials that you relied upon. Okay?</p> <p>8 A. The Updated Opening Report, Table 1, yes.</p> <p>9 Q. You have that before you. And there, you</p> <p>10 have the total display advertising operating profit</p> <p>11 you've calculated for the ten-year period for the</p> <p>12 Google display advertising division. Do you see</p> <p>13 that?</p> <p>14 A. That is not what this is, just so we're</p> <p>15 clear.</p> <p>16 Q. Well, that's what it says it is at the</p> <p>17 top?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. What it says at the top is it's Google</p> <p>20 display advertising revenue and profit for the</p> <p>21 plaintiff states --</p> <p>22 Q. Okay?</p> <p>23 A. -- for the 17 states. I want to make it</p> <p>24 clear that it's not their total.</p> <p>25 Q. Right?</p>	<p>1 [REDACTED]</p> <p>2 A. This would be the -- the direct revenue</p> <p>3 that's applicable that they've earned in this line</p> <p>4 of business that's -- that's allocable to the 17</p> <p>5 states based on my methodology.</p> <p>6 Q. Okay. And you've also calculated that</p> <p>7 Google's display advertising profit allocable to the</p> <p>8 states during that same ten years is [REDACTED]</p> <p>9 Right?</p> <p>10 A. That's the -- the amount that I've</p> <p>11 allocated based on my methodology to the -- the 17</p> <p>12 plaintiff states during this period of time from</p> <p>13 their -- directly from their display advertising</p> <p>14 revenue. I don't want to confuse that with the</p> <p>15 total benefit that Google has derived from the</p> <p>16 misconduct at issue here.</p> <p>17 Q. So in penalizing, in your view, and</p> <p>18 deterring future acts by Google, you felt it was</p> <p>19 appropriate, I think you indicated, to have a</p> <p>20 penalty assessed between 7.2 billion and 22 billion</p> <p>21 or slightly less. Right?</p> <p>22 A. I believe my penalty range is appropriate</p> <p>23 that I've calculated and it also -- as I've</p> <p>24 explained throughout my report, you have to consider</p> <p>25 not just the direct benefits from the misconduct or</p>
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<p>1 A. And -- and so that's a very big</p> <p>2 distinction and I just want to clarify that.</p> <p>3 Q. Okay. So -- but this is based upon --</p> <p>4 this -- this is advertising revenue and profits</p> <p>5 generated by the AdX division, if you will, of the</p> <p>6 company that is the subject of this lawsuit. Right?</p> <p>7 A. This is a -- a portion of the -- of the</p> <p>8 display advertising revenue and profit that Google</p> <p>9 has generated in that division.</p> <p>10 Q. Right. And you've taken a portion of</p> <p>11 those profits from that division and allocated them</p> <p>12 to the states. Right? Over that period?</p> <p>13 A. I have done that over that period, but I</p> <p>14 also, I believe, calculated -- to do that</p> <p>15 calculation, I also calculated the total that</p> <p>16 they've -- they've made in the U.S. and I believe</p> <p>17 even internationally or globally.</p> <p>18 Q. Okay.</p> <p>19 A. I've done those calculations.</p> <p>20 So this is -- this table just takes that</p> <p>21 allocation down to the 17 plaintiff states.</p> <p>22 Q. Okay. And so what you've calculated over</p> <p>23 that ten-year period is that the total display</p> <p>24 advertising revenue Google -- Google got that is</p> <p>25 allocable to the 17 states [REDACTED]</p>	<p>1 the -- even just the historical direct benefits from</p> <p>2 the misconduct. You have to think of the fact that</p> <p>3 Google has enhanced its market position in -- in</p> <p>4 this -- in this -- in this -- with -- within the</p> <p>5 AdTech business based on this misconduct. The</p> <p>6 misconduct has a snowball effect for Google in</p> <p>7 that -- that -- that -- that builds upon itself and</p> <p>8 makes -- has made them enhance their -- their</p> <p>9 position in this market and it is -- and that market</p> <p>10 and their position and enhanced position in this</p> <p>11 market has had spillover effects on the rest of its</p> <p>12 business. And this will continue well into the</p> <p>13 future.</p> <p>14 So you have to consider all of the direct</p> <p>15 and indirect benefits, all of the historical and</p> <p>16 future benefits. And -- and based on all the work</p> <p>17 that I've done, I think that those would be well in</p> <p>18 excess of \$7 billion so I think I was quite</p> <p>19 conservative at looking at the 7 billion as the</p> <p>20 lower end.</p> <p>21 And then if you look at the rest of my</p> <p>22 analysis, I think there's a very strong basis for</p> <p>23 concluding that the high range would be at least</p> <p>24 what I calculated, the 21, almost 22 billion.</p> <p>25 MR. GIBBS: Objection; nonresponsive.</p>

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1 Q. Your \$22 billion recommended penalty is
2 [REDACTED]
3 [REDACTED] True?
4
5 A. That is not true.
6 Q. Allocable to the states. That's true,
7 isn't it?
8 A. Well --
9 MR. COLLIER: Objection; form.
10 A. And, again, I think it's very important
11 to put that into context. So the context behind
12 that, that's -- that's -- that's critical to
13 understanding the penalty is to understand that this
14 would be the -- [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Now, the conduct at issue occurred in the
18 display advertising portion of their business, but
19 it will have benefits to Google that go well into
20 the future. So the revenue they make in the future
21 is all going to be enhanced by this conduct. The
22 revenue that they make in other areas of their
23 business and their profits that they make in other
24 areas of business is going to be enhanced by this.
25 And -- and there's information in the record that

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1 suggests that this portion of their business was
2 critical to Google's success as an overall
3 organization and its ability to become the fourth
4 largest company in the world.
5 So you have to put all of that into
6 perspective when you're analyzing the benefits that
7 Google received from the misconduct. This is just
8 one -- one slice that helps to put this into
9 perspective. And so I do believe that my penalty is
10 conservative and appropriate given the totality of
11 the information. And this is one -- one piece of
12 that totality and it needs to be understood in
13 context.
14 MR. GIBBS: Objection; nonresponsive.
15 Q. The question is very simple. Your
16 \$22 billion recommended penalty is, in terms of the
17 dollar amount, [REDACTED]
18 [REDACTED]
19 [REDACTED] True?
20 MR. COLLIER: Objection; form.
21 A. Well, incorporating my previous answer,
22 [REDACTED]
23 [REDACTED], and you have to consider the
24 context when looking at the -- the penalty. [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 So I think it's very important to
4 understand the context. I've explained what that
5 context is, that this revenue is just a small
6 component of the benefit that Google has -- is going
7 to have achieved as a result of its misconduct.
8 They are going to achieve benefits that -- that --
9 that filter through the entire organization so not
10 just this division. So you have to look at their
11 success as a corporation historically throughout the
12 organization, not just this division, which I've
13 done. You have to look at Google's future success,
14 where they are in the market now, how they've grown
15 as a company, and how important this portion of the
16 business has been to that growth. And -- and you
17 have to understand how they're poised to -- to
18 benefit from the misconduct going forward.
19 So it -- it -- you have to look at it
20 within the context of all of that to make -- and
21 understand the penalty range and -- and understand
22 why it is conservative and appropriate.
23 MR. GIBBS: Objection; nonresponsive.
24 Q. [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 MR. COLLIER: Objection; form.
5 A. Well, A, I disagree with that.
6 And, B, I'm going to give a complete
7 answer as I have done the last two times because I
8 think it's important. I'm under oath. I want -- I
9 don't want to -- to have an answer out of context so
10 I'm going to put this into context as I have twice
11 already and will continue to do every time you ask
12 me, that this has to be considered in context.
13 Now -- now, the -- my -- my penalty range
14 [REDACTED] and -- and this number has to
15 be put into context with -- with the -- the benefit
16 that Google has -- has achieved from the misconducts
17 at issue in this case that permeate its entire
18 organization and the future benefits. So when
19 you're looking at this, [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 that Google is going to benefit well beyond this
23 area of the business and well beyond the historical
24 viewpoint that this represents. So I think it's --
25 MR. GIBBS: Objection; nonresponsive.

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1 MR. COLLIER: Well, I don't think he
2 was done.
3 A. Very important to keep --
4 MR. GIBBS: It's hard to tell.
5 MR. COLLIER: Counsel, I'm going to
6 object to the side colloquy.
7 THE WITNESS: It's going to -- I'm
8 sorry.
9 MR. COLLIER: Please -- please
10 continue. If you need to see the transcript for
11 where you were in the answer, we can do that or you
12 can continue.
13 A. I was just going to say that I think
14 it's -- it's not appropriate to answer that question
15 without the context. So I'm going to continue to
16 put the context in.
17 Q. And I'm going to object to your -- what
18 you call context as nonresponsive.
19 Now, sir, you have also indicated you
20 calculated here [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Right, sir?
24 A. [REDACTED]
[REDACTED]

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1 [REDACTED]
[REDACTED]
3 Q. All right, sir.
4 A. -- from the time period in 2013 to 2023.
5 Q. So your upper maximum recommended penalty
6 of \$22 billion [REDACTED]
[REDACTED]
[REDACTED]
9 A. Again, I'm going to answer the way I have
10 at every -- every time you've asked me these types
11 of questions. It's very important to put this into
12 context.
13 The display advertising profit is just a
14 small look at the overall benefit that Google has --
15 has made from this misconduct and will make in the
16 future from this misconduct. It's limited to just
17 the -- the area of this business in which the AdTech
18 stack resides. It doesn't consider the -- the
19 snowball effect that this conduct has had on
20 Google's business. It doesn't -- [REDACTED]
[REDACTED]
[REDACTED]
23 And so the benefit based on my -- to
24 Google based on my analysis [REDACTED]
[REDACTED]. And if you look at the rest of

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1 my analysis and you look at what it takes to deter,
2 it would have to be a multiple of the overall
3 benefit or greater than the overall benefit and,
4 therefore, if you put in -- this into perspective
5 with the rest of my analysis, I -- I think it's very
6 reasonable and easy to conclude that this is a
7 conservative range that I've put forth and -- and a
8 correct conservative range.
9 Q. Putting aside --
10 MR. GIBBS: Nonresponsive objection.
11 Q. Putting aside your response there, the --
12 the maximum amount of your \$20-billion-plus penalty
13 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]?
17 MR. COLLIER: Objection; form.
18 You can answer.
19 A. And -- and I'm going to answer the same
20 way. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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1 [REDACTED]. And as I've
2 explained before, it is reasonable for them to
3 differ because the benefit to Google goes well
4 beyond this amount. It goes well beyond it because
5 the benefit from this conduct has a snowball effect
6 on -- on their business. And it's going to create
7 huge opportunities and advantages for Google moving
8 forward it's enhanced their position in the
9 marketplace, it has had benefits throughout their
10 organization both historically and will continue to
11 have benefits to Google into the future.
12 And when we look at the overall benefit
13 amount to Google, given those concepts and how
14 important this -- this portion of the business has
15 been to Google's overall success, I mean, that's the
16 appropriate lens to look at my analysis. And when
17 you do that, the only conclusion you could reach in
18 my opinion is that -- that range is conservative,
19 appropriate, and -- and reliable.
20 MR. GIBBS: Objection; nonresponsive.
21 Q. Let's take your limitation.
22 [REDACTED]
[REDACTED]
[REDACTED] True?
25 MR. COLLIER: Objection; form.

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<p style="text-align: right;">Page 206</p> <p>1 A. I'm going to keep giving the same answer, 2 sir. 3 Q. Okay. You will not -- you will refuse to 4 answer the question whether or not -- 5 MR. COLLIER: No, no, no, Mr. Gibbs 6 you cut him off again it's been about the tenth 7 time. Now, when he says I'm going to give you my 8 same answer and you say you will not, you are in 9 violation of the code of conduct in the eastern 10 district. So you either withdraw your question or 11 you let him fully answer it. Your call. 12 Q. Answer the question, please, sir. 13 MR. COLLIER: Do you remember the 14 question, sir? 15 THE WITNESS: Would you please read 16 it back to me? 17 Q. I'll restate the question. 18 A. Okay. 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] True or false? 24 MR. COLLIER: Objection; form. 25 You may answer.</p>	<p style="text-align: right;">Page 208</p> <p>1 have to consider those benefits. 2 And so we have to put this into 3 perspective. And it's not just going to have 4 benefits within the display advertising portion of 5 their business. It's going to -- it has and will 6 continue to benefit Google in other areas of their 7 business. And so you have to put that lens on -- on 8 this analysis when you're looking at the penalty 9 range. So this -- this -- looking at this number 10 and comparing it to the range. A, I think it's just 11 an inappropriate math to do because it's not -- it 12 doesn't consider all those other facts. But, B, I 13 think it's really important to keep it -- if you do 14 it, to keep it in the proper context. 15 MR. GIBBS: Objection; nonresponsive. 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] I 19 think from a mathematical perspective, that's -- 20 that's directionally right. I don't -- I haven't 21 done the math. [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 it's important and appropriate to put it in the</p>
<p style="text-align: right;">Page 207</p> <p>1 A. Okay. And I'm going to say while it 2 sounds like your math is not correct, I haven't done 3 that math. But if you're going to do it, you have 4 to understand it in the -- the context of what this 5 represents and what my penalty represents. And I'm 6 going to go through that very specifically again. 7 That this just represents a portion of the -- of the 8 a small portion of the benefit that Google has 9 derived from its misconduct in this case. And 10 when -- when we're thinking about a penalty that 11 serves as not only an appropriate penalty for the 12 violation but one that -- that is sufficient enough 13 to deter Google and other -- and others from -- from 14 committing future violations, one has to understand 15 the overall benefit that Google has earned or -- or 16 put that into context. And the overall benefit is 17 much, much greater than this because this conduct 18 has a snowball effect and it -- it is such that 19 Google has enhanced its position in the AdTech 20 arena. It's going to earn benefits -- significant 21 benefits for Google into the future, so as long as 22 Google exists as a company. Which when we do 23 valuations in businesses, we assume is into 24 perpetuity. So it's going to add benefits to Google 25 for as long as Google is around and -- and -- and we</p>	<p style="text-align: right;">Page 209</p> <p>1 correct context. 2 And so I think if you're going to make 3 that comparison and -- and -- and put out what the 4 number is, it's important to do it in context and 5 I've given that context over and over again. And 6 I'm gonna do it another time to say that this is 7 just a small portion of the benefits that Google has 8 made from its misconduct. You have to consider the 9 future benefits, the benefits throughout its entire 10 organization, the snowball effect that this conduct 11 has on Google, and if you're looking for a penalty 12 range that deters Google from future violations, you 13 have to consider all of those benefits. And this is 14 just one slice of that benefit that I've calculated. 15 So it's not appropriate to make the comparison that 16 you're making. 17 MR. GIBBS: Objection; nonresponsive. 18 Q. Is it your opinion that 100 percent of 19 these profits that you've calculated from the 20 advertising -- display advertising division were 21 produced by Google's alleged misconduct under the 22 DTPA? 23 MR. COLLIER: Objection; form. 24 A. That is not my opinion. Because as I've 25 stated in my report, [REDACTED]</p>

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] So I have to look at the
15 benefit to Google based on various financial
16 information that's available to me. This is one
17 aspect of that.
18 Q. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] Right?
22 A. And I -- as I understand these -- I have
23 calculated these numbers. I understand that this
24 relates to the portion of -- of Google's business
25 that the AdTech stack and -- and those components.

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1 And I understand based on my work in this case and
2 others that I have relied upon, that that ecosystem
3 has been deceptive as a result of this conduct. And
4 therefore I think it's appropriate to look at these
5 numbers and -- and understand them but understand
6 them in context to -- to my assignment in this case.
7 MR. GIBBS: Objection; nonresponsive.
8 Q. Can you tell us what percentage in your
9 opinion of these profits, if it's less than
10 100 percent, were attributable to the misconduct
11 under the DTPA? Can you tell us?
12 MR. COLLIER: Objection; form.
13 A. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] And therefore I have to use other
17 information, other financial information to
18 understand it. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED].
23 Q. Using your --
24 A. Hang on. I'm not done. I'm sorry.
25 And -- and so I think this is a good

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1 proxy for the -- [REDACTED]
2 [REDACTED] -- which was deceptive
3 by -- by nature because of the conduct. And
4 therefore I think this is a good proxy to consider
5 in relation to all the other information I've
6 considered to -- to help understand how Google is
7 benefitting and -- and the scope and scale of the
8 benefits from the -- this misconduct --
9 MR. GIBBS: Objection; nonresponsive.
10 A. -- and -- hold on. I'm almost done. And
11 so when you put that into perspective with the rest
12 of the information I've considered, I think you --
13 you will -- one should conclude that my range is
14 appropriate, reasonable, reliable.
15 MR. GIBBS: Objection; nonresponsive.
16 Q. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 MR. COLLIER: Objection; form.
21 A. I'm going to answer the same way I just
22 answered. I think it's the question you just asked.
23 So I'm just going to answer the same way.
24 And that is because [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED] I
3 couldn't do an analysis to calculate that
4 incremental benefit. So I had to look at other
5 financial information to determine the benefit that
6 Google or the scope and scale of the benefit to
7 Google. And so I have. And -- and so when I looked
8 at Google's financial statements and profit-and-loss
9 statements, I have tried to isolate the behavior --
10 or -- or the -- the profitability to the portion of
11 the business where the behavior occurs.
12 And it's my understanding based on my
13 review and analysis of this work, as well as on the
14 testimony from other experts in this case, that in
15 this area of the business and the profit that I've
16 calculated here relate to the portion of the
17 business that has been -- that has been -- that this
18 has been earned as a result of that -- that
19 deceptive conduct. That -- that whole area of the
20 business has been deceptive. That ecosystem is
21 deceptive.
22 But you have to take that into context of
23 all the other analysis I've done, the -- the
24 assignment I've been asked to do, and put it into
25 the appropriate context. And if you do I think it's

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<p>1 very clear that my range is appropriate, reliable, 2 and conservative. 3 MR. GIBBS: Objection; nonresponsive. 4 Q. Is it your opinion that but for the 5 challenged conduct [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 MR. COLLIER: Objection; form. 9 A. That is not my -- that is not my opinion. 10 That's not what I put in my report. What I'm saying 11 is when I'm looking at the -- trying to isolate the 12 incremental benefit that Google has made from its 13 misconduct in this case, I looked to certain data 14 and information. [REDACTED] 15 [REDACTED] 16 [REDACTED] And so now I have to look 17 at other information to -- to put the -- put the 18 benefits from this conduct into perspective. And -- 19 and so I've looked at their -- their financials. 20 I've looked at where in their financials this area 21 of the business relates. I've tried to limit in 22 that -- within that area of business to the areas 23 that contain this misconduct. 24 And then I -- I've looked through my own 25 work and work of others to determine that this area</p>	<p>1 THE WITNESS: I'm sorry. 2 MR. COLLIER: Go ahead. 3 A. Yeah. So -- 4 (Discussion off the written record.) 5 A. I'm going to have the same answer to that 6 question as the previous questions. 7 And that is [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 So I am not able to determine the 16 incremental benefit, and therefore I have to look at 17 other information and try to understand what might 18 be a good proxy for that benefit. 19 And so this is one of the looks I've 20 taken, where I've tried to take Google's financials, 21 I try to look at where this part of the business is. 22 Then I try to limit even those financials to just 23 the -- the part of the business that engaged in this 24 conduct during the time. 25 I understand that that whole part of the</p>
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<p>1 of the business where the conduct has occurred has 2 been -- is a deceptive area of Google's business 3 because of that conduct. 4 So all the -- the profits they've earned 5 into this business have been earned during this time 6 involved that deception. And -- and I know that the 7 deception has provided benefits to Google well 8 beyond this area of their business. I know that -- 9 the -- the area allocated -- the profits allocated 10 to the states have provided -- the conduct allocated 11 to the states has provided benefits well beyond the 12 states, well beyond display advertising, well beyond 13 historical look into the future. 14 And one must consider all of those 15 different aspects when -- when calculating an 16 appropriate penalty that's going to serve as an 17 appropriate penalty, plus deter Google and others 18 from future violations. 19 MR. GIBBS: Objection; nonresponsive. 20 Q. So as between 100 percent and zero 21 percent, tell us, if you can, what percent of 22 profits are not attributable, if any, in your 23 opinion, to the misconduct? 24 A. Yeah, so -- 25 MR. COLLIER: Objection; form.</p>	<p>1 business and that ecosystem is deceptive by nature 2 because of the conduct. So I think this represents 3 a good proxy for the benefits that Google derives 4 historically, the direct benefits, from this 5 misconduct. 6 But one has to understand that the 7 benefits extend well beyond this -- this narrow look 8 at Google's financials. It -- it extends into -- 9 there's a snowball effect from this misconduct that 10 has created an enhanced market position for Google, 11 not just in the AdTech stack, but throughout its 12 organization. And it will have benefits well into 13 the future, and -- and all of those benefits have to 14 be considered. 15 And when one considers all those, I think 16 you put it into the light of my range, and my range 17 is reliable, it's -- it's conservative, and it's 18 appropriate. 19 MR. GIBBS: Objection; nonresponsive. 20 Q. Under your methodology I think you've 21 indicated that if you took the maximum penalty under 22 the state statutes, DTPA statutes for Google's 23 alleged misconduct and multiplied them times the 24 number of transactions as you have calculated under 25 your methodology, that that maximum dollar penalty</p>

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<p style="text-align: right;">Page 218</p> <p>1 that you would assess Google would be [REDACTED] [REDACTED]. Right?</p> <p>3 A. That was a long question and that -- 4 there's something I wanted to clarify. 5 Would you please restate that?</p> <p>6 Q. Yes, sir. 7 Under your methodology the maximum 8 penalty for Google's alleged misconduct, if you use 9 the maximums under the state law, it would be [REDACTED] [REDACTED]. True?</p> <p>11 A. What I wanted to clarify is that one of 12 the statutes, I believe, doesn't have a maximum 13 penalty. It's unlimited. I think it's Utah, if I 14 remember correctly. It doesn't have a maximum. 15 And so I have assumed that the maximum 16 for Utah was \$1,000, which -- which I believe is -- 17 is on the lower end of the maximums for the other 18 states. 19 So based on that assumption about Utah, 20 I've quantified -- if you take my -- my violation 21 count and multiplied it times the -- the -- the 22 maximum of each state's, based on the allocation 23 methodology that I used, you would have [REDACTED] [REDACTED].</p> <p>25 Q. Have you ever calculated or read a</p>	<p style="text-align: right;">Page 220</p> <p>1 looked at different -- [REDACTED] [REDACTED] [REDACTED]</p> <p>4 I looked at -- I looked at different 5 ranges to -- to see where would we get to a level of 6 penalty, given my other areas of -- of focus that I 7 was asked to consider, that would -- that would meet 8 that obligation in a kind of holistic look at those 9 factors. 10 MR. GIBBS: Objection; nonresponsive. 11 Q. My question was in your experience have 12 either you or any other expert ever included a -- as 13 part of their methodology a potential maximum 14 penalty calculation of [REDACTED] 15 A. I can't answer what other experts have 16 done and what they've concluded. This is the -- for 17 me, I have not looked at anything to this scale and 18 scope that would get to that size, but this scale 19 and scope gets to that size. 20 And so in my work I had to determine what 21 that was, because that's an important part of my 22 analysis. And the slope of the line from zero 23 violations to zero dollars to [REDACTED] [REDACTED], that 25 slope is an important slope in -- in my work because</p>
<p style="text-align: right;">Page 219</p> <p>1 calculation of a civil penalty which included a 2 potential maximum penalty calculation totaling 3 [REDACTED]</p> <p>4 A. I think the scope and scale of this case 5 is at a level that is probably unprecedented in 6 history, if you think about the number of violations 7 [REDACTED]. I -- I -- I can't -- I 8 don't know of another case, as I sit here, that 9 would come close to the scope and scale of this one, 10 in terms of the number of violations, and I was 11 showing the relationship. 12 As we said, the slope of that line that 13 we discussed earlier in my testimony today. And so 14 I'm showing that, look, if we -- if the juror was 15 going to apply the maximum, that's what the number 16 would be. And that number is such a large number 17 that it would be -- Google wouldn't exist anymore as 18 a company. 19 It's just not even -- I think it's just 20 so far out and so high that I knew the penalty 21 couldn't be the maximum. So that's when I said -- 22 all right. I started to look at, well, what if it's 23 [REDACTED] [REDACTED] [REDACTED] I</p>	<p style="text-align: right;">Page 221</p> <p>1 that's what enables the juror to -- if they go below 2 the violation count that would get off a straight 3 line that we talked about in Figure 2 of my rebuttal 4 report, that would -- that would be what would 5 enable them to calculate, you know, a different 6 total penalty, given the total violations. 7 MR. GIBBS: Objection; nonresponsive. 8 Q. Have you yourself ever included in any 9 methodology regarding calculation of penalties or 10 have you read any other expert's methodology in 11 which they have included an upper maximum penalty of 12 [REDACTED]? 13 MR. COLLIER: I'm going to object; 14 form. And to the extent he's asking about reading 15 any other expert's methodology, to the extent other 16 experts have testified in cases where you're 17 governed by another judge's protective order, I 18 encourage you not to violate that protective order. 19 THE WITNESS: Okay. 20 MR. COLLIER: That said, I believe 21 you can answer the question, but I wanted to remind 22 you he's now asking about testimony under other 23 cases in other protective orders. 24 A. Okay. As I -- as I sit here, I -- I 25 don't know what all experts have done in all their</p>

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<p style="text-align: right;">Page 222</p> <p>1 cases. The cases that I've been involved in, I 2 don't believe any of them have reached the scope and 3 scale that this one has that would -- that would -- 4 if one was calculating the number of violations 5 times the maximum benefit would get to the 6 [REDACTED] 7 But this case has the scope and scale 8 that is so far beyond anything I've ever seen that 9 the number of violations are [REDACTED]. 10 When you -- when you think about what the 11 maximum possible penalty would be, given the 12 statutes, that's the number you get to. So it's not 13 one that I'm putting forth as an opinion. That's 14 just a fact. 15 If you take the number of violations and 16 multiply it times the total penalty -- the maximum 17 penalty for the allowable under the statutes, that's 18 the number you get. 19 And so I think that's an important number 20 to keep in perspective and -- and it's important to 21 my work in this case, but it's not the number that 22 I'm suggesting is an appropriate penalty. 23 MR. GIBBS: Objection; nonresponsive. 24 Q. Have you defined the term "deterrence" 25 that applies to your objective here in setting the</p>	<p style="text-align: right;">Page 224</p> <p>1 MR. COLLIER: It's up to Mr. Gibbs. 2 He's threatened it, so go ahead and do it if you 3 want. 4 MR. GIBBS: Well, look, we're -- 5 THE WITNESS: I'll go to the restroom 6 again. 7 MR. COLLIER: Well, I don't -- do you 8 need to go to the restroom? 9 THE WITNESS: No. 10 MR. COLLIER: Okay. Mr. Gibbs, do 11 you want to go off the record or do you want him to 12 answer your question? 13 MR. GIBBS: Just put it on the 14 record. She can calculate how long he is taking to 15 tie his answer to the -- to the -- text of the 16 report. 17 MR. COLLIER: She can do that, you 18 can do that. 19 Q. The question on the table, sir, is how do 20 you define deterrence in your evaluation of these 21 penalties? Can you answer that question? 22 A. I understand the question and I'm -- just 23 wanted to look at my report and -- and read it to 24 you such that we can -- we can then use the words in 25 the report. I will tell you, if you want, generally</p>
<p style="text-align: right;">Page 223</p> <p>1 penalty in this case? 2 A. I believe I discussed that in my rebuttal 3 report. So let me pull that up. 4 Q. Well, can you tell us, as you sit here, 5 how you understand "deterrence" as you used it here 6 in your factor? 7 A. I prefer to refer exactly to my report 8 because I define it specifically in my report. And 9 I want to make sure I'm -- I'm under oath. I want 10 to give the right answer, so I want to -- I want to 11 read it from my report. So if you just give me a 12 minute, I will tell you where that is and we can 13 take it from there. 14 (Pause.) 15 Q. We're going to have to start going off 16 the record if you're going to do this, sir. 17 MR. COLLIER: You can go off the 18 record any time you want. You're not going to give 19 him homework off the record. 20 MR. GIBBS: Well, he can do whatever 21 he wants. 22 MR. COLLIER: It's fine. Go off the 23 record if you want. 24 THE WITNESS: Are we going off the 25 record?</p>	<p style="text-align: right;">Page 225</p> <p>1 I -- I mentioned in my report how -- if you're going 2 to deter an offender from engaging in misconduct, 3 that misconduct at a minimum cannot be beneficial -- 4 cannot be profitable. And so you'd have to have a 5 fine that's large enough for it to not be 6 profitable. And you would also have to consider 7 then if it's not going to be profitable, that it has 8 to be more than their -- than their -- more than 9 just disgorging that profit because you have to take 10 into consideration the probability that the conduct 11 would be detected, litigated, and taken to a 12 judgment. And so I've talked about that in my 13 report. I'm trying to find exactly where so -- 14 so -- 15 Q. Under your understanding and intent with 16 respect to deterrence, is the objective to 17 completely deter a repeating of that conduct in the 18 future? 19 MR. COLLIER: Objection; form. 20 A. My understanding is that if you're going 21 to deter future conduct, you don't want to make that 22 conduct beneficial and I've cited other -- other -- 23 I've -- I've cited information in my opening and 24 my -- and my rebuttal report that supports that 25 understanding, that -- that position.</p>

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<p style="text-align: right;">Page 226</p> <p>1 And so if the -- if the conduct is</p> <p>2 beneficial to the offender, then there's going to be</p> <p>3 an economic incentive to continue to engage in the</p> <p>4 misconduct even if they've been penalized it is</p> <p>5 because the penalty -- if the penalty doesn't</p> <p>6 sufficiently -- sufficiently penalize them and make</p> <p>7 it not beneficial. So the penalty has to make it</p> <p>8 not beneficial for it to serve as a -- as a</p> <p>9 deterrent. Otherwise, the rational economic actor</p> <p>10 would continue to engage in the penalty as long as</p> <p>11 it's beneficial.</p> <p>12 Q. Under your understanding and -- and</p> <p>13 definition, do you -- is the goal to eliminate any</p> <p>14 benefit to the offender?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. Under my understanding, if you're going</p> <p>17 to deter behavior, you cannot allow the behavior to</p> <p>18 be profitable to the offender because that wouldn't</p> <p>19 deter. Corporations are economic animals. They</p> <p>20 pursue and finance, today we call it net present</p> <p>21 value positive projects. They're going to pursue</p> <p>22 projects that add value to the firm. If it -- if it</p> <p>23 adds value in the firm to engage in misconduct,</p> <p>24 they're going to pursue that, because that's their</p> <p>25 job is to add value to the firm.</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Mr. Andrien, one of the things you</p> <p>2 purport to do in your methodology is to allocate</p> <p>3 revenue and profit to individual states. Am I</p> <p>4 correct in that?</p> <p>5 A. I do make allocations to individual</p> <p>6 states, yes.</p> <p>7 Q. Why are you -- why are you doing that as</p> <p>8 part of your civil penalty recommendation here?</p> <p>9 MR. COLLIER: Objection; form.</p> <p>10 A. I am looking at Google's financials in a</p> <p>11 variety of different ways, and I think all of which</p> <p>12 are instrumental and -- and instructive and</p> <p>13 informative into reaching my ultimate conclusion.</p> <p>14 Q. Well, what does the allocation of revenue</p> <p>15 and profit to Texas versus Florida have to do with</p> <p>16 your calculation of the penalty? How do they</p> <p>17 relate?</p> <p>18 A. Well, for example, when I looked at</p> <p>19 the -- the [REDACTED]</p> <p>20 [REDACTED], it was based on the maximum penalty of each</p> <p>21 state so it was important to allocate violations to</p> <p>22 each state to be able to do that calculation.</p> <p>23 Q. Did you actually calculate a penalty</p> <p>24 amount for each of the 17 states?</p> <p>25 A. While I have not calculated a penalty</p>
<p style="text-align: right;">Page 227</p> <p>1 If -- if you're going to penalize and</p> <p>2 dissuade a firm and -- and deter that conduct, it --</p> <p>3 it can't be profitable for them to engage in because</p> <p>4 if it is, then there's an incentive to continue to</p> <p>5 do it. You haven't effectively deterred the</p> <p>6 behavior.</p> <p>7 Q. To effectively deter the behavior, in</p> <p>8 your opinion, you have to eliminate any benefit?</p> <p>9 MR. COLLIER: Objection; form.</p> <p>10 Q. To the offender.</p> <p>11 A. I believe economic theory says that you</p> <p>12 would have to do more than that. And I believe</p> <p>13 that's -- and, again, I have an area in my opening</p> <p>14 report so I can point you to it. Just give me a</p> <p>15 moment and I'll point you to it.</p> <p>16 There's so much volume in these reports,</p> <p>17 it's hard for me to remember exactly where it is.</p> <p>18 MR. GIBBS: While you're looking for</p> <p>19 that, let's go off the record.</p> <p>20 MR. COLLIER: Okay.</p> <p>21 THE VIDEOGRAPHER: Going off the</p> <p>22 record. The time is 3:28.</p> <p>23 (Break.)</p> <p>24 THE VIDEOGRAPHER: Back on the</p> <p>25 record. The time is 3:46. 0</p>	<p style="text-align: right;">Page 229</p> <p>1 amount for each of the 17 states individually, I</p> <p>2 have provided the basis for a juror to do that. I</p> <p>3 provided them the information and the -- I think</p> <p>4 the -- to do that is -- is simple math based on --</p> <p>5 on what I've done.</p> <p>6 Q. So did you lay out in your report an</p> <p>7 explanation for how you -- your methodology of</p> <p>8 calculating or allocating revenue and profit to the</p> <p>9 states, how that relates to or is a measure for</p> <p>10 determining each states' separate penalty?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. Would you please restate that question?</p> <p>13 I -- I got confused as you were saying it.</p> <p>14 MR. GIBBS: Read that question,</p> <p>15 please.</p> <p>16 (The requested material was read.)</p> <p>17 MR. COLLIER: And I had an objection;</p> <p>18 form.</p> <p>19 Go ahead.</p> <p>20 A. So in my report, the allocation of</p> <p>21 revenue and profit and -- to the various states is</p> <p>22 to help me understand how -- how I can look at</p> <p>23 global financials and see what they look like for</p> <p>24 the 17 plaintiff states. It is not to -- it is not</p> <p>25 to assign a penalty per individual state based on</p>

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<p>1 the allocation of profits.</p> <p>2 But I've provided a -- a basis and</p> <p>3 under- -- and an understanding that my penalty range</p> <p>4 is -- is calculated based on all the different</p> <p>5 analyses I've done and that penalty range is</p> <p>6 instructive to states because we can look at the</p> <p>7 number of violations per state. And given the</p> <p>8 number of violations -- and, quite frankly, [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED] -- you're going to end up in my penalty range.</p> <p>11 So I believe I've given the juror the --</p> <p>12 the capability of looking at my work, my penalty</p> <p>13 range, and applying it. So if one -- if only one</p> <p>14 out of the 17 plaintiff states -- I don't know the</p> <p>15 correct term for saying this. Google is found</p> <p>16 liable for violating the statutes in one out of the</p> <p>17 17 states and the other -- the other 16 they're not</p> <p>18 found liable for, I've provided the -- the -- the</p> <p>19 foundation basis and analyses for which a juror</p> <p>20 could look at my work and -- and determine if the</p> <p>21 violation counts are sufficient to be within my</p> <p>22 range, then my range would apply. If it's below</p> <p>23 that -- which I don't see how it could be below</p> <p>24 that. But if it's below that, I've given them</p> <p>25 the -- the basis for calculating the -- the profit</p>	<p>1 violations to be within my range. So to -- to that</p> <p>2 extent, I have calculated a specific number because</p> <p>3 my range is in play on either any individual state</p> <p>4 or any two states or any permutation and combination</p> <p>5 of states are found liable for violating their</p> <p>6 statutes, then we're going to have a violation count</p> <p>7 sufficient to end up in my penalty range. And so</p> <p>8 based on that, I believe I have calculated an</p> <p>9 appropriate number to assist the jurors.</p> <p>10 Moreover, if the juror ends up with a</p> <p>11 violation count [REDACTED]</p> <p>12 [REDACTED], I've given them the -- the -- the</p> <p>13 information to be able to quantify exactly what that</p> <p>14 penalty should be if we get below that. But I</p> <p>15 haven't seen any basis for any state, individually</p> <p>16 or in aggregate or any permutation or combination of</p> <p>17 states, that would get a violation count that low.</p> <p>18 So I believe I have calculated the</p> <p>19 number. If -- if they come up with something</p> <p>20 different, I've given them the basis for doing their</p> <p>21 own calculation.</p> <p>22 Q. You calculated one range, 7.2 billion up</p> <p>23 to 22 billion, that you're recommending, not 17</p> <p>24 different ranges. True?</p> <p>25 MR. COLLIER: Objection; form.</p>
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<p>1 per state based on the number of violation -- I mean</p> <p>2 the penalty per state based on the number of</p> <p>3 violations.</p> <p>4 Q. So have you calculated, as we sit here,</p> <p>5 and included in your report a separate proposed</p> <p>6 penalty for each of the states?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. Based on my calculation of the -- the --</p> <p>9 the number of violations in each state, there was no</p> <p>10 need to calculate a separate number because in each</p> <p>11 state, the violations would be sufficiently numerous</p> <p>12 where -- where either independently or in an</p> <p>13 aggregate, you would get to my -- you would get to</p> <p>14 my range as I've described on -- on -- as we</p> <p>15 discussed Figure 2 in my rebuttal report, how that</p> <p>16 works.</p> <p>17 Q. So the answer is you have not calculated</p> <p>18 a separate penalty amount that you're recommending</p> <p>19 for each and every one of the states?</p> <p>20 MR. COLLIER: Object --</p> <p>21 Q. That's true, isn't it?</p> <p>22 MR. COLLIER: Objection; form.</p> <p>23 A. I don't believe that's true. What I've</p> <p>24 done is I've calculated the violation count for each</p> <p>25 state. I've shown that each state has sufficient</p>	<p>1 A. I have calculated a range that serves as</p> <p>2 an appropriate penalty as well as an appropriate</p> <p>3 deterrent to Google and others to deter Google and</p> <p>4 others from future misconduct and -- and to -- to</p> <p>5 meet those -- to achieve those qualifications,</p> <p>6 and -- and then also one that Google can afford to</p> <p>7 pay, one that wasn't going to bankrupt Google. And</p> <p>8 given those three qualifications, I've come up with</p> <p>9 a range and it turns out that given the number of</p> <p>10 violations, that that range is applicable, whether</p> <p>11 it's one state, two states, 13, 17, any permutation</p> <p>12 combination. So I have quantified the range for</p> <p>13 each individual. They just all fall into the same</p> <p>14 range.</p> <p>15 Q. So one-size-fits-all under your theory in</p> <p>16 terms of the range that would be allocable to any of</p> <p>17 the states. Would that be correct?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. I would not use that language. What --</p> <p>20 what I would say is that the number of violations --</p> <p>21 the scope and scale of the number of violations in</p> <p>22 this case are so large that you're in the -- [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED] And I've looked at each by state and</p>

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1 by -- by conduct [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 And given that -- given the scope and
5 scale of this, if you're going to penalized Google
6 for the misconduct to punish them for it and provide
7 a -- a penalty amount that would deter Google from
8 future misconduct and one that they can pay, you're
9 going to end up in this range and it's going to be
10 based upon the number of violations.
11 So it's not a one-size-fits-all that I
12 just willy-nilly apply. It is an appropriate range
13 that meets the criteria that I've been asked to
14 consider and the violation counts are so large that
15 any way you slice it, that you end up in that range.
16 Q. What if Florida has a -- it turns out has
17 a [REDACTED]
18 [REDACTED]. How do
19 each of them -- how much -- how much of a -- of a
20 penalty have you calculated should go to each of
21 those individual states?
22 A. So if they have in aggregate gone over as
23 you said [REDACTED],
24 the penalty range has to be within -- within
25 my -- excuse me -- within my range. Because you are

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1 over -- you are on the part of the curve, the
2 flattened part of the curve that we discussed in my
3 rebuttal report from Figure 2, this part. And so --
4 so we can look and see which portion of that is
5 going to apply to each state. But the aggregate is
6 going to be within my range. I've given the -- I've
7 given the -- the slope of the curve. We know the
8 maximum penalty for each state. It would be easy to
9 quantify what would be appropriate given numbers
10 that are below or numbers that are above. So it's
11 just math at that point.
12 Q. Well, supposing one of the states just
13 pulled out of this case and then and went and tried
14 to prove up its own under your theory, to prove up
15 its own number of violations. Are you with me?
16 A. I am.
17 Q. And the jury finds in that case they only
18 get -- [REDACTED]
19 [REDACTED]. How much money under your
20 methodology goes to them under --
21 A. Yeah.
22 Q. -- your penalty theory?
23 A. As I was --
24 MR. COLLIER: Hold on. One second.
25 THE WITNESS: Oh, I'm sorry.

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1 MR. COLLIER: Objection; form.
2 Now you can answer.
3 A. Yeah, as I've said you would look at this
4 straight line and the slope of that straight line
5 which I have given the information to calculate, and
6 you would just go this is the number of violations,
7 let's go up and see where it lands on this line, and
8 that will give us the total penalty amount. It's
9 simple math at that point. And so I have not
10 specifically calculated every single permutation
11 combination of violations and -- and penalties. But
12 I've given the -- the information to be able to do
13 that.
14 Q. You -- there is no statement in there
15 explaining how it is that each individual state gets
16 X-number of dollars under your methodology. Would
17 you agree?
18 MR. COLLIER: Objection; form.
19 A. I -- I believe that I've sufficiently
20 described my methodology, how I've gotten to my
21 conclusion, the basis for them. I'm here explaining
22 it to you today and so I am -- I am telling you,
23 now, that the -- the slope of that line is going to
24 be able to help one determine what the appropriate
25 penalty amount is if the counts are sufficiently low

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1 to get outside of my range. But for the counts
2 to sufficiently -- there's no basis I've seen in the
3 record or from any other expert in this case that
4 would suggest we're even close in terms of violation
5 counts to get outside of my range. So there's no --
6 there's no reasonable -- there's -- there's no
7 reason that I felt was worthy enough for me to do
8 individual calculations. But the -- the ability to
9 do that math is there.
10 Q. So there's no -- there's no way in the
11 way you have calculated the 22 billion maximum
12 penalty, is there some way that the -- the State of
13 Florida or Nevada can come in and say, well, we
14 don't get the full 22 billion, we get X. How does
15 that work?
16 MR. COLLIER: Objection; form.
17 A. I don't understand the question as you've
18 asked it. Would you please either rephrase it or
19 repeat it and see if I can --
20 Q. Each one of the --
21 A. -- understand it.
22 Q. Excuse me. Each one of these states is
23 suing under their own separate DTPA statute. Right?
24 A. That's my understanding. I'm not a
25 lawyer, but I understand they each have -- each have

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<p style="text-align: right;">Page 238</p> <p>1 individual statutes that are -- that are applicable 2 to those states, but they're -- they're -- they're 3 coordinating under one lawsuit. 4 Q. And -- and one of -- and each of those 5 statutes as you understand it has multiple different 6 factors that sometimes overlap, many times don't 7 overlap with other states that are to be taken into 8 account in assessing that individual state's 9 penalties. Right? 10 A. I -- 11 MR. COLLIER: Objection; form. 12 A. I have analyzed the factors that I have 13 been asked to consider which as an economist I 14 believe would be important to all of the states. So 15 the factors that I've been asked to consider and 16 the -- the ranges that I have provided, the range 17 that I have provided I think is relevant to all of 18 the states. And I think those factors that I 19 consider is relevant. 20 But as I've said that if -- if the jury 21 is asked to consider other factors, they might, 22 under their own purview, adjust the range or numbers 23 that I've come up with. 24 Q. Well, they -- for example, you haven't 25 provided on an individual basis an analysis of some</p>	<p style="text-align: right;">Page 240</p> <p>1 Nevada and I've got five other factors, and I -- I 2 think those deserve consideration, I think I ought 3 to base those -- my share or my penalties on those. 4 You have not provided under that circumstance an 5 analysis with money attached to it for that state, 6 have you? 7 MR. COLLIER: Objection; form. 8 A. I disagree with that conclusion. I 9 provided them analysis for that state given the 10 factors that I've considered. Now, if they want to 11 add different factors, that's within their purview 12 as the juror. They might be asked to do that. I 13 don't know. I've been asked to consider -- the ones 14 that I've asked to consider and I provide 15 information to the jury that's applicable to each 16 state that they can use to help them come to a 17 conclusion on penalties. Specifically as it relates 18 to those factors and as a baseline for whether or 19 not there should be an adjustment based on other 20 factors. 21 Q. And based upon any of those other factors 22 other than the three that you have selected, if the 23 State of Nevada wanted to calculate based upon the 24 other factors there, they just have to start over 25 and make their own assessment. Right, sir?</p>
<p style="text-align: right;">Page 239</p> <p>1 of the prime factors under other states that don't 2 fall within the three that you picked. True? 3 MR. COLLIER: Objection; form. 4 A. I've -- I've analyzed under the scope of 5 work that I've been -- I've been assigned to 6 analyze, the three factors that I've analyzed, and 7 the appropriate penalty to Google -- to punish 8 Google for the alleged misconduct in this case, 9 based on those factors or considering those factors. 10 And that's -- that's -- I think those factors are 11 appropriate to consider for all states, as I've 12 said, and given the economic -- I can give the 13 economic rationale why it's appropriate. And 14 therefore that's the work I've done. And I think 15 that's instructive to the jury, it's helpful to the 16 jury, it's beneficial to them to have that baseline 17 to be able to apply to their analysis. And if they 18 need to adjust it because they need to consider 19 other factors, that's within their purview to do. 20 I'm not telling them how to do that or what to do 21 about other factors. I am -- I am telling them how 22 to interpret the information to assess the factors 23 that I've been asked to consider. 24 Q. Right. And so if somebody decided, well, 25 nice to hear about those three factors, but I'm in</p>	<p style="text-align: right;">Page 241</p> <p>1 MR. COLLIER: Objection; form. 2 A. I -- I -- I want to make sure I 3 understand your question properly. If you're 4 suggesting that my factors wouldn't be relevant to a 5 state, I don't see a basis for that from an economic 6 perspective. I think they're relevant to all the 7 states. I think I've given rationale why in my 8 report. 9 But if you're tell me that the states 10 aren't going to consider the factors that I've 11 addressed and they're irrelevant to those states, 12 then they would consider other factors. And if 13 they're not going to consider the factors that I've 14 considered, they would at least have a baseline for 15 what an appropriate penalty is given those factors. 16 And they could use that as a baseline for the 17 factors that they are considering. 18 So I still think it could be relevant 19 information. But if you're telling me they've been 20 instructed to ignore that information, then I don't 21 know how to answer that question because -- 22 Q. I didn't suggest -- 23 A. -- it doesn't make sense. 24 Q. -- anybody was instructing them one way 25 or another. I said, suppose that they wanted to</p>

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<p>Page 242</p> <p>1 consider under their own state's factors how much of</p> <p>2 a penalty to assess or that they were entitled to.</p> <p>3 You don't -- you don't tell them how to assess those</p> <p>4 under their state's separate penalties, do you?</p> <p>5 A. I am --</p> <p>6 MR. COLLIER: Object -- okay.</p> <p>7 Objection; form.</p> <p>8 Go ahead.</p> <p>9 A. I'm not following that question. What</p> <p>10 I -- what I think I've testified to and what I'll</p> <p>11 say again is I think the fact -- first of all, I</p> <p>12 think quantifying a penalty and making sure Google</p> <p>13 is punished for its misconduct is an important thing</p> <p>14 to do. And in considering what that penalty should</p> <p>15 be, considering the factors that I've considered, I</p> <p>16 think there are important economic factors that --</p> <p>17 that should apply to each of the states involved in</p> <p>18 this case from an economic perspective. I think</p> <p>19 I've given the -- the trier of fact the ability</p> <p>20 to -- to think about those for each and every state</p> <p>21 independent of the others. And if they want to</p> <p>22 apply other factors to that, that's within their</p> <p>23 purview. And they have a basis now by which they</p> <p>24 can apply those other factors.</p> <p>25 So I think what I've done is informative,</p>	<p>Page 244</p> <p>1 allocation to the states, so I've had to allocate</p> <p>2 the total number of -- of auctions at issue to the</p> <p>3 states. And so I've used an allocation methodology</p> <p>4 to do that. I've described the methodology. I've</p> <p>5 labeled the percentages for each state. And so if I</p> <p>6 haven't totaled each state in this report, it's</p> <p>7 simple math to do based on the allocation</p> <p>8 percentages and the number of -- for each state and</p> <p>9 the number of violations that I've counted in</p> <p>10 aggregate. So I -- I -- I believe that might exist</p> <p>11 in my work papers. If it doesn't the math is -- is</p> <p>12 absolutely readily available to somebody. And it's</p> <p>13 just multiplying A times B at that point.</p> <p>14 Q. How many -- do you have an opinion or</p> <p>15 offer an opinion as to how many DTPA violations</p> <p>16 occurred in Texas?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. I believe I've just answered that in my</p> <p>19 work paper. I have provided information to multiply</p> <p>20 the A times the B that it would take to identify</p> <p>21 Texas specifically.</p> <p>22 So -- and I say in my report that I have</p> <p>23 the flexibility -- my methodology has the</p> <p>24 flexibility to look at any permutation and</p> <p>25 combination of -- of states, of -- of -- of conduct</p>
<p>Page 243</p> <p>1 instructive, it's reliable, it is important to the</p> <p>2 juror and it -- it relies on -- on analysis, on</p> <p>3 training, experience, education, methodologies that</p> <p>4 the average juror wouldn't be able to -- to get to</p> <p>5 on their own. So I do think it's important to have</p> <p>6 that information available to them.</p> <p>7 Q. Does your allocation among the states as</p> <p>8 part of your 7-plus billion to \$22 billion range,</p> <p>9 does it tell us how many DTPA violations in your</p> <p>10 opinion occurred in each state?</p> <p>11 A. I can allocate to each state based on the</p> <p>12 allocation. And -- give me -- give me one second</p> <p>13 here and I'll --</p> <p>14 I have a -- a total number that's</p> <p>15 allocable to the states. And so I've done that math</p> <p>16 and I believe it's in my work papers that I provided</p> <p>17 in this case. So you absolutely can look and see</p> <p>18 the number of violations per state per -- per</p> <p>19 temporal component for each of the -- each of the</p> <p>20 different conducts.</p> <p>21 Q. You've got a total figure for those</p> <p>22 states of how many DTPA violations occurred in each</p> <p>23 state?</p> <p>24 A. I have -- would have to go look at the</p> <p>25 work papers to answer that. But the -- the -- the</p>	<p>Page 245</p> <p>1 that's at issue of contemp- -- of the time periods</p> <p>2 at issue for any one of these.</p> <p>3 So it's all there in simple math if -- if</p> <p>4 something needs to be changed from -- from what I've</p> <p>5 calculated. It's all in the work papers. It's all</p> <p>6 described in the report. It's very simple to</p> <p>7 calculate that, if it's not already calculated in</p> <p>8 the work papers, which I don't recall as I sit here.</p> <p>9 Q. Do you have data showing Google's display</p> <p>10 advertising profit and loss within the United</p> <p>11 States?</p> <p>12 A. I believe that's been calculated, again,</p> <p>13 in the work papers because I used the total numbers.</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 Q. Okay. So you estimated the total profit</p> <p>17 and loss to Google's display advertising division</p> <p>18 within the United States?</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 And I did that based on a -- a -- an</p>

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<p style="text-align: right;">Page 246</p> <p>1 allocation of Google's profitability between 2 globally and the United States that it does report 3 in its financials. And I used that method of 4 allocating the display advertising to the United 5 States, and then I describe in my report exactly how 6 I -- I take that answer and allocate to the 7 different states. 8 Q. So did you begin with the global revenue 9 and profit P&Ls for Google? 10 A. Well, I don't recall what I began with in 11 my -- in my analysis, but I've looked at Google's 12 financial statements which report global information 13 and report U.S. information, I believe. 14 Q. Okay. 15 A. I've looked at their P&Ls, which the P&Ls 16 that I've had I believe were on a global basis. 17 Q. Does the -- did you use the global P&L 18 breakdown of their P&L -- global P&Ls for Google to 19 estimate the profit and loss in the United States? 20 A. For their display advertising I used the 21 global information and estimated based on an 22 allocation methodology that I've explained was from 23 their financial statements, which does have 24 reporting information both domestically and -- and 25 globally.</p>	<p style="text-align: right;">Page 248</p> <p>1 and loss figures or ratios between the two for the 2 United States only, separated out? 3 A. Maybe I wasn't clear though. So, I mean, 4 let me -- let me state this again in a way that 5 hopefully is more clear. 6 The -- the financial statements that 7 Google has -- has -- has put out into the world, 8 their annual financial statements, has financial 9 data on profitability for both globally and 10 domestically. 11 And so I can look at a specific ratio 12 between Google's U.S. results and their global 13 results. And I can understand what that ratio is. 14 It's -- it's -- it's reported, so it's not -- it's 15 not estimated, it's not -- it's not any sort of 16 guess of what that is. It is this is what they 17 report. 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 And so I had to look at the global and -- 23 and I had to figure out what is an appropriate way 24 to understand what that is in the United States and 25 therefore in the 17 states.</p>
<p style="text-align: right;">Page 247</p> <p>1 So I was able to use the relationship 2 between their -- their -- their financial statements 3 between domestic and global profit and apply that to 4 the P&L, the global P&L, to get the domestic. 5 Because the information available to me 6 that Google does -- either not retain or provide did 7 not give me P&Ls by the -- at the U.S. level. So I 8 needed to -- to -- and their financials that are at 9 the U.S. level don't have the sufficient detail that 10 those P&Ls did have for me to be able to determine 11 what the display advertising profitability and 12 revenues were. 13 So I needed to use a combination of the 14 financial information provided to me to reach 15 that -- that determination, that calculation. 16 Q. Is the ratio between profit and loss the 17 same globally for Google as it is in the United 18 States? 19 A. That question does not make sense to me. 20 Q. The profit and loss that is reported in 21 their global financials, you have that information. 22 Right? 23 A. Yes. 24 Q. Did you use that information and 25 extrapolate from that in your methodology the profit</p>	<p style="text-align: right;">Page 249</p> <p>1 And so what I did is I looked at those 2 global results. I applied that ratio between U.S. 3 and global results and their overall financials to 4 this, these P&Ls, to get an estimate of what the -- 5 what the -- the U.S. P&Ls would -- would -- results 6 would be. And from that I have allocated to the 17 7 states. 8 Q. The -- did you then estimate the display 9 advertising revenue and profit associated with the 10 plaintiff states? 11 MR. COLLIER: Objection; form. 12 A. I believe I've said that. Once I looked 13 at the global P&Ls and winnowed those to the area 14 that -- that I was focused in on, the display 15 advertising, then I -- I applied the ratio to get to 16 the U.S. results, and then I did a further 17 allocation of that information to get to the U.S. -- 18 I mean, excuse me, to get to the individual -- 19 Q. States. 20 A. -- states. 21 Q. All right. And then did you multiply 22 that share by the population of the -- of the 23 states? 24 A. I did not. 25 Q. Did you undertake to determine the share</p>

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<p style="text-align: right;">Page 250</p> <p>1 of the internet subscription rates in the states to</p> <p>2 the population of the states?</p> <p>3 A. No. That's not an analysis I've done.</p> <p>4 What I've -- what I've done to -- for the allocation</p> <p>5 to the individual states is I looked at the number</p> <p>6 of internet users in those states in relation to the</p> <p>7 number of internet users in the United States.</p> <p>8 And so that's the -- the ratio that I</p> <p>9 applied to get to the individual states. And I</p> <p>10 believe that's an appropriate, reasonable ratio to</p> <p>11 use for doing this type of allocation.</p> <p>12 Q. Let me see if I understand.</p> <p>13 In each year you took the share of each</p> <p>14 state's households that have an internet</p> <p>15 subscription. That was part of what you did.</p> <p>16 Right?</p> <p>17 A. I looked, as I said, the number of</p> <p>18 internet subscribers in each state versus the number</p> <p>19 of internet subscribers in the United States as a</p> <p>20 whole.</p> <p>21 Q. Okay. Did you multiply that -- that</p> <p>22 internet subscription, that number by the share of</p> <p>23 the -- of that share by the population of the state</p> <p>24 in order to estimate the number of persons in each</p> <p>25 state that have an internet subscription?</p>	<p style="text-align: right;">Page 252</p> <p>1 filings."</p> <p>2 Right?</p> <p>3 A. Yes. That's the step I just described to</p> <p>4 you earlier, that I looked at the financial</p> <p>5 statements that had Google and U.S. data. I used</p> <p>6 the ratio between Google's performance globally and</p> <p>7 performance in the U.S., and I looked at that each</p> <p>8 year as the basis for -- for figuring out what --</p> <p>9 what -- how to turn the global P&L that didn't have</p> <p>10 that breakdown into what portion of that's</p> <p>11 attributable to the -- the U.S.</p> <p>12 Q. The next step you said was: To estimate</p> <p>13 display advertising revenue and profit associated</p> <p>14 with the plaintiff states.</p> <p>15 Right?</p> <p>16 A. That's the next --</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 Go ahead.</p> <p>19 A. That's what I do next. I estimate that.</p> <p>20 Q. And then you note that: The U.S. Census</p> <p>21 Bureau collects an assortment of data about the</p> <p>22 people and economy of the United States, including</p> <p>23 data on internet use, which it has collected as a</p> <p>24 part of the American Community Survey (ACS) since</p> <p>25 2013.</p>
<p style="text-align: right;">Page 251</p> <p>1 A. I don't understand your question. I --</p> <p>2 I -- I explain exactly what I've done very clearly</p> <p>3 in my report, and I thought I explained it again. I</p> <p>4 don't understand the question you just asked me.</p> <p>5 Q. Let's look at 93.</p> <p>6 MR. GIBBS: Paragraph.</p> <p>7 MR. COLLIER: Paragraph, sorry.</p> <p>8 Q. Paragraph 93 of your opening report. Do</p> <p>9 you have that before you?</p> <p>10 A. I do.</p> <p>11 Q. You say: To estimate the share of</p> <p>12 Google's overall display advertising revenue and</p> <p>13 profit described above that is attributable to the</p> <p>14 plaintiff states, you take two additional steps.</p> <p>15 Do you follow me?</p> <p>16 A. I -- I see what you're saying, yes.</p> <p>17 Q. "First, I estimate Google's U.S. display</p> <p>18 advertising revenues and profits."</p> <p>19 Right?</p> <p>20 A. Yes.</p> <p>21 Q. "By multiplying Google's annual display</p> <p>22 advertising revenues and profits from Google's P&Ls,</p> <p>23 as described above, by the percent of its overall</p> <p>24 revenues attributable to the United States in each</p> <p>25 respective year as reflected in Google/Alphabet SEC</p>	<p style="text-align: right;">Page 253</p> <p>1 Right?</p> <p>2 A. Yes.</p> <p>3 Q. And then you say, over in the next page:</p> <p>4 In each year you took the -- take the share of each</p> <p>5 state's households that have an internet</p> <p>6 subscription as provided by the ACS and multiply</p> <p>7 that share by the population of the state in order</p> <p>8 to estimate the number of persons in each state that</p> <p>9 have an internet subscription in each year 2013</p> <p>10 through 2022. Right, sir?</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. And then you perform the same operation</p> <p>13 for the United States overall in each year for that</p> <p>14 ten years. Right?</p> <p>15 A. Yes.</p> <p>16 Q. And the U.S. Senate -- U.S. Census Bureau</p> <p>17 has not yet released '23, so you assumed 2023</p> <p>18 figures are the same as 2022. Right?</p> <p>19 A. That is correct again.</p> <p>20 Q. And then finally you use this ratio:</p> <p>21 Each state's persons with internet subscriptions</p> <p>22 versus all Americans with internet subscriptions and</p> <p>23 apply it to Google's U.S. display advertising</p> <p>24 revenue and profit in each year as described above</p> <p>25 to estimate Google's display advertising revenue and</p>

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<p style="text-align: right;">Page 254</p> <p>1 associated with each state for the years 2013 2 through 2023. 3 Right? 4 A. That's correct. 5 Q. Okay. Do you agree that not all internet 6 access involves display ads? 7 MR. COLLIER: Objection; form. 8 A. Do I agree that not all internet access 9 involves display ads? In general, I would agree 10 that -- that -- that every internet interaction does 11 not necessarily result in a display ad, in general. 12 But I also believe this is a -- I have 13 not been able to identify, nor has anybody else in 14 this case been able to identify a more appropriate 15 allocation method than this. I think this is a 16 highly appropriate, reliable, useful measure. And 17 it's -- the reason I have to do this is because 18 Google does not keep the information on the number 19 of users in each state, the number of -- of its 20 financials by each state. So I have to find an 21 allocation methodology to be able to do that. And I 22 think this is a reliable, good one. 23 I've seen no -- no other method that I 24 think is better in this case and -- and so I -- I 25 really stand behind this as the correct one to think</p>	<p style="text-align: right;">Page 256</p> <p>1 unlikely, but would it be possible that -- that one 2 doesn't? Perhaps. But, again, that impossibility 3 exists throughout internet users in the U.S. and 4 within each state. So I believe that -- that -- 5 that my -- my -- my methodology considers that 6 and -- and is adjusted for that because it exists 7 both locally and globally or -- or throughout the 8 entire U.S. 9 Q. Some people -- 10 A. And so I just think that is as fine a 11 detail as -- as -- as we can get to as a method for 12 allocation. I think it's appropriate and reliable. 13 Q. Well, it was a method you selected. 14 Right? 15 MR. COLLIER: Objection; form. 16 A. I did utilize this. I think it's 17 appropriate and I think it's -- and I haven't seen 18 anything that anybody suggested that would -- that 19 would provide a better allocation methodology than 20 this. 21 Q. For -- 22 A. This is -- 23 Q. Excuse me. 24 A. This is absolutely the -- the best 25 methodology I believe and I'm aware of to use in</p>
<p style="text-align: right;">Page 255</p> <p>1 about. 2 MR. GIBBS: Object; nonresponsive. 3 Q. Internet subscriptions can involve 4 something that doesn't involve any access to a 5 display ad at all. Would you agree? 6 MR. COLLIER: Objection; form. 7 A. Yeah. What -- what I'm going to say is, 8 again, I -- I am not stating that every -- every 9 internet interaction results in a display ad. 10 That's not the analysis that I've done. That's not 11 an assumption that I've made. 12 What I'm stating is that I'm trying to 13 understand how to allocate Google's success and its 14 profit across different states in the U.S. A 15 reasonable appropriate way to do it is to look at 16 the internet users within the internet user 17 population within those states and compare it to the 18 internet user population overall. That's an 19 appropriate, reasonable, reliable method to use. 20 Q. An internet user in a particular 21 household may not engage in any display ads 22 observations whatsoever. True? 23 MR. COLLIER: Objection; form. 24 A. If you're thinking about individually, 25 it's possible that a -- a -- I think it's probably</p>	<p style="text-align: right;">Page 257</p> <p>1 this case. 2 MR. GIBBS: Objection; nonresponsive. 3 Q. For example, sir, a Netflix subscription 4 doesn't involve display ads, does it? 5 A. I would have to think whether or not a 6 Netflix subscription could provide a display ad. I 7 think there's video ads. 8 Q. Some people just use their Netflix 9 subscription for their subscription -- internet 10 subscription to watch Netflix, for example. Right? 11 A. People use their internet subscriptions 12 for all sorts of things. 13 Q. That's right. 14 A. And what I -- what I believe I testified 15 to a moment ago and I'll say again is the likelihood 16 of that happening to internet users in the United 17 States, there's a likelihood of that and there's a 18 likelihood in each state. So when I'm using each 19 states' internet users versus the United States 20 internet users, that is considered in using that 21 ratio and I think that makes it an applicable 22 appropriate ratio to use. 23 Q. There's a statement about the number of 24 households that have internet subscriptions in a 25 state. Tell us anything quantifiable about No. 1,</p>

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<p style="text-align: right;">Page 258</p> <p>1 how many ad buyers there are in a state.</p> <p>2 MR. COLLIER: Objection; form.</p> <p>3 A. So tell us how many ad buyers are in a</p> <p>4 state?</p> <p>5 Q. Yes, sir.</p> <p>6 A. I think this is a useful tool in</p> <p>7 understanding internet commerce in states relative</p> <p>8 to internet commerce in the United States. And</p> <p>9 that's -- that's the important relationship that I'm</p> <p>10 trying to -- that I think should be used to</p> <p>11 allocate. So I think that's what needs to be</p> <p>12 considered. That's what I've considered and that's</p> <p>13 important.</p> <p>14 So to the extent internet commerce</p> <p>15 includes -- what did you -- what -- what was the</p> <p>16 advertiser what?</p> <p>17 Q. Ad buyers.</p> <p>18 A. Advertiser buyers. I think there's a --</p> <p>19 that are included in the auctions that are generated</p> <p>20 by users, I think this -- and we have to remember</p> <p>21 that auctions are generated by users, that -- that</p> <p>22 the user population is an appropriate basis for</p> <p>23 making the -- the allocations that I've made --</p> <p>24 Q. Well, for --</p> <p>25 A. -- it's just -- it's just --</p>	<p style="text-align: right;">Page 260</p> <p>1 state, how many ad buyers does that confirm are in</p> <p>2 the state or ad sellers, either one?</p> <p>3 MR. COLLIER: Objection; form.</p> <p>4 A. That would indicate the number of users</p> <p>5 that are in the state. That question is kind of a</p> <p>6 non-sequitur to me because it does not relate in --</p> <p>7 in the way it needs to to the work that I'm doing.</p> <p>8 And so what I'm doing is trying to</p> <p>9 understand Google -- how to allocate Google's share</p> <p>10 of United States revenue and profits to the 17</p> <p>11 states. They -- they earn that based on user --</p> <p>12 based on user activity and -- and, therefore, I</p> <p>13 think looking at users -- the number of users in</p> <p>14 each state versus the number of users in the U.S. is</p> <p>15 the appropriate way to do it. There's no other good</p> <p>16 way that I've seen or -- or know about to do that</p> <p>17 work.</p> <p>18 MR. GIBBS: Objection; nonresponsive.</p> <p>19 Q. Didn't answer how many ad buyers and ad</p> <p>20 sellers for every thousand subscribers, internet</p> <p>21 subscribers in a state?</p> <p>22 MR. COLLIER: Objection; form, asked</p> <p>23 and answered.</p> <p>24 Q. What's the answer to that question?</p> <p>25 MR. COLLIER: Objection; form, asked</p>
<p style="text-align: right;">Page 259</p> <p>1 MR. GIBBS: Objection; nonresponsive.</p> <p>2 A. -- quite clear.</p> <p>3 Q. For -- for, say, a thousand -- a thousand</p> <p>4 subscribers or subscriptions in the state of Texas,</p> <p>5 how many ad buyers does that indicate there are?</p> <p>6 MR. COLLIER: Objection; form.</p> <p>7 A. Well, I haven't analyzed that. It's not</p> <p>8 important to analyze and it mis- -- it -- it's</p> <p>9 irrelevant to my analysis and what my analysis is</p> <p>10 doing is saying Google is making -- is making its</p> <p>11 money off of the activity of users and the users are</p> <p>12 located throughout the United States and they have</p> <p>13 to be internet users and so I've -- I've looked at</p> <p>14 the ratio between internet users in each state</p> <p>15 versus the United States and used that as a basis</p> <p>16 for allocation of Google's profitability and</p> <p>17 their -- their revenues, et cetera. And that is a</p> <p>18 highly appropriate, reliable, reasonable method.</p> <p>19 Q. For every thousand subscribers in a</p> <p>20 state, how many ad buyers and/or ad sellers by group</p> <p>21 does that measure and indicate?</p> <p>22 MR. COLLIER: Objection; form.</p> <p>23 A. Would you repeat the question, please?</p> <p>24 Q. Yes, sir.</p> <p>25 For every thousand subscriptions in a</p>	<p style="text-align: right;">Page 261</p> <p>1 and answered.</p> <p>2 A. I think I've answered that question that</p> <p>3 it's -- that question is a non-sequitur. It doesn't</p> <p>4 make sense to me because it's irrelevant to my</p> <p>5 analysis, to the rationale behind my analysis. So</p> <p>6 it doesn't make any sense to me and -- and it's --</p> <p>7 it's not an analysis that I've performed because</p> <p>8 it's not one that was necessary to perform because</p> <p>9 it would be irrelevant to the work that I was doing.</p> <p>10 MR. GIBBS: Objection; nonresponsive.</p> <p>11 Q. Does the number of households with</p> <p>12 internet service or subscriptions tell you how many</p> <p>13 display ads were sold in a state by all of the ad</p> <p>14 sellers?</p> <p>15 MR. COLLIER: Objection; form.</p> <p>16 A. Would you repeat the question, please?</p> <p>17 Q. Yes, sir.</p> <p>18 Does the number of households with</p> <p>19 internet service subscriptions tell you how many</p> <p>20 display ads were sold in a state by all the ad</p> <p>21 sellers in that state?</p> <p>22 MR. COLLIER: Objection; form.</p> <p>23 A. I don't believe where the ad sellers are</p> <p>24 located is -- is necessarily a relevant portion of</p> <p>25 that question again because the users in the states</p>

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<p style="text-align: right;">Page 262</p> <p>1 are the ones that get on the internet and create the</p> <p>2 auction. And so if they're in the state and create</p> <p>3 the auction, it's important to understand that --</p> <p>4 where they're located --</p> <p>5 Q. Internet --</p> <p>6 A. -- and so -- hang on a second.</p> <p>7 And so -- so the user base, understanding</p> <p>8 the -- the user base in each state compared to the</p> <p>9 user base in the United States is the relevant</p> <p>10 metric to think about when applying Google's --</p> <p>11 when -- when allocating Google's financials to the</p> <p>12 individual states.</p> <p>13 Q. So in shorthand, whether you think it's</p> <p>14 relevant or not, my question is, for every thousand</p> <p>15 internet service subscribers in a state, how many</p> <p>16 display ads were sold in a state by all the ad</p> <p>17 sellers in that state?</p> <p>18 A. And I'm going to give the same answer,</p> <p>19 that that question is a non-sequitur. I don't</p> <p>20 understand it. It's not relevant to my analysis.</p> <p>21 It is -- it -- it conflates different issues so it's</p> <p>22 hard for -- like, it doesn't make sense to me.</p> <p>23 MR. GIBBS: Okay. Nonresponsive.</p> <p>24 Q. You have no answer as to how -- based</p> <p>25 upon internet subscribers in a state, how many ads</p>	<p style="text-align: right;">Page 264</p> <p>1 MR. COLLIER: Objection; form.</p> <p>2 A. Again, I -- I -- I lost the question as</p> <p>3 you were reading it.</p> <p>4 Q. Let me repeat it, then.</p> <p>5 A. If you could slow down because I was</p> <p>6 having trouble following -- following you.</p> <p>7 Q. Certainly.</p> <p>8 Does the number of internet subscriptions</p> <p>9 in a state identify how many ads were sold in that</p> <p>10 state using Google's AdTech platform or its tools?</p> <p>11 A. I think it provides a ratio -- a reliable</p> <p>12 ratio between the number -- between that state and</p> <p>13 the numbers sold in the United States based on the</p> <p>14 number of users. So I think it provides the</p> <p>15 reliable ratio and that's what I was using was the</p> <p>16 ratio for my allocation. So I think it provides me</p> <p>17 the information to -- to utilize that ratio and</p> <p>18 so -- so I did.</p> <p>19 Q. What is the ratio?</p> <p>20 A. The ratio is the number of internet users</p> <p>21 in each state to the number of internet users in the</p> <p>22 United States.</p> <p>23 Q. I don't understand how the -- the number</p> <p>24 of -- of internet subscribers in a state versus</p> <p>25 internet subscribers in the country that tells you</p>
<p style="text-align: right;">Page 263</p> <p>1 are sold in a state by all of the ad sellers. True?</p> <p>2 MR. COLLIER: Objection; form.</p> <p>3 A. How many ads are sold by all of the ad</p> <p>4 sellers.</p> <p>5 Q. In the state.</p> <p>6 A. All the ads are sold by the ad sellers.</p> <p>7 Q. How many -- all right. How many display</p> <p>8 ads were sold in a state based upon the number of</p> <p>9 subscribers? What's the number?</p> <p>10 MR. COLLIER: Objection; form.</p> <p>11 A. I -- the -- I have not performed the</p> <p>12 analysis to determine the number of -- of ads that</p> <p>13 are sold per subscriber. What I'm saying is that</p> <p>14 the users generate the auction and, therefore, if</p> <p>15 I'm looking at the way to allocate financial</p> <p>16 information or auction information in this case,</p> <p>17 looking at the user base in each state relative to</p> <p>18 the United States is the appropriate way to do it.</p> <p>19 It's -- it's the only way that -- that I've seen</p> <p>20 that makes sense on how to do it.</p> <p>21 MR. GIBBS: Objection; nonresponsive.</p> <p>22 Q. Does the subscription -- the number of</p> <p>23 subscriptions in a state identify how many ads were</p> <p>24 sold in a -- in that state by using -- or using</p> <p>25 Google's AdTech platform or its tools?</p>	<p style="text-align: right;">Page 265</p> <p>1 how many Google Ads were sold in a state. Explain</p> <p>2 that to me.</p> <p>3 A. Because I'm -- what I'm saying is it's</p> <p>4 not -- the -- the number it's the relationship</p> <p>5 that's important. So the -- the relationship is how</p> <p>6 many were sold in that state versus how many were</p> <p>7 sold in the United States. And the way you</p> <p>8 understand that relationship is to look at the user</p> <p>9 base and that's what I've done.</p> <p>10 Q. Have you made some calculation by state</p> <p>11 by any of the 17 states as to how many Google Ads,</p> <p>12 based upon your internet subscription theory, were</p> <p>13 sold in each of the years?</p> <p>14 MR. COLLIER: Objection; form.</p> <p>15 A. I've made a determination that the</p> <p>16 relationship between the user base in those states</p> <p>17 and the user base in the United States would be</p> <p>18 relevant to -- to the ratio between the states and</p> <p>19 the United States of Google's profitability of</p> <p>20 their -- of their -- of the revenues that they earn</p> <p>21 in the U.S. That's a reliable, reasonable</p> <p>22 methodology. So -- and I believe that incorporates</p> <p>23 your question.</p> <p>24 Q. I'm asking specifically about AdTech</p> <p>25 platform users and people that subscribe and then</p>

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<p>1 use the AdTech platform or it's tools?</p> <p>2 MR. COLLIER: Objection; form.</p> <p>3 Q. What does the -- what does the</p> <p>4 subscription rate tell you about how many people</p> <p>5 within that state in a -- in a year or a period of</p> <p>6 time actually use the -- the Google AdTech platform?</p> <p>7 A. I think --</p> <p>8 MR. COLLIER: Objection; form.</p> <p>9 A. I'm just going to keep answering the same</p> <p>10 way. I think this provides me a reliable ratio</p> <p>11 between the numbers of -- of internet users in</p> <p>12 the -- the states versus the U.S. The internet</p> <p>13 users are the ones that create the auctions by which</p> <p>14 Google makes money. And so allocating the -- the --</p> <p>15 their success in internet commerce -- Google's</p> <p>16 success in internet commerce, I think this is the</p> <p>17 most appropriate, reliable means by which to -- to</p> <p>18 use as an allocation methodology. Which I wouldn't</p> <p>19 need to do if Google provided or kept that</p> <p>20 information for me. I had to -- I had to come up</p> <p>21 with a method of making those allocations because</p> <p>22 the -- the -- the data wasn't available for me not</p> <p>23 to have to use an allocation method.</p> <p>24 Q. Do you know whether Google maintains</p> <p>25 records which track based upon subscription rates or</p>	<p>1 A. Does the number of internet --</p> <p>2 Q. Subscriptions?</p> <p>3 A. -- subscriptions.</p> <p>4 Q. In a state tell you where the ad buyers</p> <p>5 or the ad sellers were when they bought and sold ads</p> <p>6 using Google's AdTech?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. I don't believe you can ascertain that</p> <p>9 information from the number of users. But I don't</p> <p>10 believe that information is relevant to making</p> <p>11 the -- the allocations that I've made. In fact, I</p> <p>12 think it would be the wrong information to use for</p> <p>13 allocation of Google's revenues and profits.</p> <p>14 They've earned their revenues and profits from</p> <p>15 internet commerce. And looking at internet</p> <p>16 commerce, it's reasonable to allocate internet</p> <p>17 commerce to Google's success and internet commerce</p> <p>18 to different states based on the -- the user base.</p> <p>19 Q. Which you've indicated Google doesn't</p> <p>20 track these -- these -- the identities or numbers of</p> <p>21 ad purchasers or sellers based upon subscription</p> <p>22 rates. Right?</p> <p>23 MR. COLLIER: Objection; form.</p> <p>24 Q. You've told us that I think. Right?</p> <p>25 A. Google has not provided any information</p>
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<p>1 subscription holders in states, the number of Google</p> <p>2 Ads --</p> <p>3 MR. COLLIER: Objection; form.</p> <p>4 Q. -- are used?</p> <p>5 A. I believe I requested them there for the</p> <p>6 plaintiffs or requested information from Google that</p> <p>7 says: Do you have the data that we need available</p> <p>8 by -- by state.</p> <p>9 And that data is not available. So</p> <p>10 Google does not -- either does not retain it, does</p> <p>11 not track it, or -- or doesn't have it. But either</p> <p>12 way that information wasn't available to me, I</p> <p>13 couldn't use it. So I had to make an allocation.</p> <p>14 And when looking at different allocation</p> <p>15 methodologies, this one was clearly the -- the best,</p> <p>16 most reliable methodology that I'm aware of. And --</p> <p>17 and I haven't been made aware of a better one by any</p> <p>18 other expert in this case or -- or I've given any</p> <p>19 rationale why another one would be more appropriate.</p> <p>20 MR. GIBBS: Objection; nonresponsive.</p> <p>21 Q. Does the number of internet subscription</p> <p>22 in a state tell you where the ad buyers or ad</p> <p>23 sellers were when they bought and sold ads using</p> <p>24 Google's AdTech?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p>1 related to being able to allocate its profitability</p> <p>2 or revenues to the various states. They -- they've</p> <p>3 given us no basis by which to do that.</p> <p>4 So I've used the methodology that is</p> <p>5 described in my report which I believe is reasonable</p> <p>6 and reliable and appropriate.</p> <p>7 Q. To your knowledge, does any AdTech</p> <p>8 company, whether it's Google or its competitors,</p> <p>9 track the number of ads -- ad transactions in -- by</p> <p>10 state based upon internet subscriptions by state, to</p> <p>11 your knowledge?</p> <p>12 MR. COLLIER: Objection; form.</p> <p>13 A. I only have access to the information</p> <p>14 that was available to me in this case and</p> <p>15 independent research. And -- and based on my</p> <p>16 independent research and the information available</p> <p>17 to -- to me in this case. What I can tell you is</p> <p>18 that Google doesn't keep that information.</p> <p>19 Q. Does anybody else?</p> <p>20 A. I -- it was not part of the scope of my</p> <p>21 work to look to see what -- if anybody else does. I</p> <p>22 looked to see if I could find information on -- on</p> <p>23 reasonable methods of allocating and there was</p> <p>24 nothing available to me that I believe is better</p> <p>25 than the method I used. And if --</p>

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<p style="text-align: right;">Page 270</p> <p>1 Q. And nothing --</p> <p>2 (Simultaneous speaking.)</p> <p>3 Q. -- there was a methodology that's better,</p> <p>4 I'd like to see it, I will consider it, and if it's</p> <p>5 worth applying, I'll apply it. I would be -- be</p> <p>6 happy to do so.</p> <p>7 MR. GIBBS: Objection; nonresponsive.</p> <p>8 Q. Your independent research over and above</p> <p>9 what you were assigned to look at, did not turn up</p> <p>10 any indication that anybody in the AdTech industry</p> <p>11 tracks ad displays based upon internet subscriptions</p> <p>12 by state. True?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. I have not uncovered in my independent</p> <p>15 analysis an indication of how other ad platforms</p> <p>16 track -- what was the advertise -- did you say ad --</p> <p>17 could you --</p> <p>18 Q. Advertising -- advertising displays, what</p> <p>19 we're here on, auctions?</p> <p>20 A. But I do understand that auctions are a</p> <p>21 result of the -- the user base, internet user base</p> <p>22 accessing websites. And that's going to create an</p> <p>23 individual auction based on that access. And so if</p> <p>24 you're looking -- and Google is going to make money</p> <p>25 off that auction. So if you're looking at -- at the</p>	<p style="text-align: right;">Page 272</p> <p>1 some ratio based in turn upon subscription rates in</p> <p>2 the states?</p> <p>3 A. I've --</p> <p>4 MR. COLLIER: I'm sorry. Were you</p> <p>5 done?</p> <p>6 MR. GIBBS: Yes.</p> <p>7 MR. COLLIER: Mr. Andrien, I -- I</p> <p>8 instruct you not to disclose any information that</p> <p>9 may be covered by a protected order. I believe you</p> <p>10 can answer that question yes or no without violating</p> <p>11 any protective orders. And I will allow you to do</p> <p>12 that.</p> <p>13 A. Yes, I have.</p> <p>14 Q. As part of your analysis here, is it your</p> <p>15 testimony that somebody has tracked and does track</p> <p>16 the number of ad buyers and ad sellers by state</p> <p>17 based upon the internet subscriptions in that state?</p> <p>18 A. I -- I apologize. Maybe I can be</p> <p>19 clearer. And I want to be careful here, but I have</p> <p>20 seen -- I don't know how to answer this question.</p> <p>21 MR. COLLIER: Do -- do you need to</p> <p>22 consult with me not to -- not to violate a</p> <p>23 protective order?</p> <p>24 THE WITNESS: I -- I -- I would like</p> <p>25 to if that's allowed.</p>
<p style="text-align: right;">Page 271</p> <p>1 states by which Google makes its money, looking at</p> <p>2 the user base is a wholly appropriate way to do it.</p> <p>3 Because that's what creates the auction that -- that</p> <p>4 Google is -- from which Google is generating money.</p> <p>5 So I think that's a really reliable, appropriate</p> <p>6 method and -- and that's why I've used it.</p> <p>7 MR. GIBBS: Objection; nonresponsive.</p> <p>8 Q. Is it true that this so-called reliable</p> <p>9 and only method to your knowledge has only been</p> <p>10 employed in this context by yourself, Mr. Andrien?</p> <p>11 A. I don't -- I don't believe that to be --</p> <p>12 I -- I don't believe that's probably the case. I</p> <p>13 think this method is a method that's reliable.</p> <p>14 It's -- it's -- it's informative and if you</p> <p>15 understand that Google is making its money through</p> <p>16 internet commerce, it's making its money through</p> <p>17 auctions that happen when an internet user gets onto</p> <p>18 a website, and this is an absolutely appropriate way</p> <p>19 to go about figuring out what portion would be</p> <p>20 allocated -- allocable to each state.</p> <p>21 MR. GIBBS: Objection; nonresponsive.</p> <p>22 Q. Can you identify as you sit here a single</p> <p>23 other expert or industry publication that tracks the</p> <p>24 things I've asked you about here, ad sellers, ad</p> <p>25 buyers, or the number of display events based upon</p>	<p style="text-align: right;">Page 273</p> <p>1 MR. COLLIER: Okay.</p> <p>2 Mr. Gibbs, it's up to you. There</p> <p>3 is a -- I'll consult with him, I'll not. I have an</p> <p>4 idea what this answer is and which is why I</p> <p>5 understand you're treading into information covered</p> <p>6 by another court's protective order. But if you</p> <p>7 want me to consult with him and see if I can craft</p> <p>8 you an answer that doesn't make you violate the</p> <p>9 protective order or the witness, I'm happy to do so.</p> <p>10 MR. GIBBS: Well, since I'm at a</p> <p>11 disadvantage, I don't know what the information is</p> <p>12 you're talking about, certainly you have a right to</p> <p>13 consult with the client.</p> <p>14 MR. COLLIER: Okay.</p> <p>15 MR. GIBBS: I'm going to -- I'm going</p> <p>16 to dignify it with a yes or no that I agree with it.</p> <p>17 But I can't -- I can't do that.</p> <p>18 MR. COLLIER: I have a good-faith</p> <p>19 basis to believe that the answer is covered by</p> <p>20 another court's protective order. And I think we're</p> <p>21 coming up on time on a break. I'll use break time</p> <p>22 to consult with him. I'm not trying to take your</p> <p>23 on-the-record time. But I do need to consult with</p> <p>24 my client and figure out how to fashion an answer to</p> <p>25 your question that doesn't put you, me, or</p>

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<p>1 Mr. Andrien in trouble.</p> <p>2 MR. GIBBS: Fair enough. Let's take</p> <p>3 a break.</p> <p>4 MR. COLLIER: Okay. I wasn't trying</p> <p>5 to make you take a break now. I just -- I will do</p> <p>6 it on a break.</p> <p>7 THE WITNESS: It's a good time for</p> <p>8 me.</p> <p>9 MR. COLLIER: Okay.</p> <p>10 THE VIDEOGRAPHER: Going off the</p> <p>11 record. The time is 4:48 p.m.</p> <p>12 (Break.)</p> <p>13 THE VIDEOGRAPHER: We're back on the</p> <p>14 record. The time is 5:05.</p> <p>15 MR. COLLIER: Mr. Gibbs, I consulted</p> <p>16 with -- with my client, Mr. Andrien, and he's going</p> <p>17 to give a statement as best he can that answers your</p> <p>18 question what he believes keeps him compliant with</p> <p>19 the protective order.</p> <p>20 And I'll let him give that and we'll</p> <p>21 see where it goes.</p> <p>22 MR. GIBBS: All right.</p> <p>23 A. So I am aware of an expert who has</p> <p>24 utilized the ratio between internet users in states</p> <p>25 versus internet users in the United States as a</p>	<p>1 aware of any public sources in which any industry</p> <p>2 participant or analyst tracks or identifies the</p> <p>3 number of ad sellers or ad buyers in a state based</p> <p>4 upon the number of internet subscriptions in that</p> <p>5 state?</p> <p>6 A. As I sit here right now, I can't recall a</p> <p>7 publication that comes to mind that tracks the</p> <p>8 number of ad buyers or the number of ad sellers by</p> <p>9 the ratio between internet users in a state to</p> <p>10 internet users in a -- in the United States.</p> <p>11 As I sit here, I don't -- I don't recall</p> <p>12 seeing anything that would do that, that I can</p> <p>13 recall.</p> <p>14 Q. What is --</p> <p>15 A. I do -- oh, I was just going to say I've</p> <p>16 seen ratios used to allocate financials routinely,</p> <p>17 and I teach that routinely. And based on my review</p> <p>18 of the record in this case, my review of the data</p> <p>19 available in my independent research, I believe this</p> <p>20 was an appropriate, reliable method for allocating</p> <p>21 the -- the financial information I've allocated to</p> <p>22 the individual states.</p> <p>23 Q. Have you done any analysis to demonstrate</p> <p>24 the validity of your suggestion that household</p> <p>25 internet subscriptions are a reasonable way to</p>
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<p>1 means by which to allocate financial -- a company's</p> <p>2 financial results to -- from the U.S. to individual</p> <p>3 states.</p> <p>4 Q. Is that the only such -- is that the only</p> <p>5 such tracking use that you're aware of using either</p> <p>6 the subscription rate of a state as a tracking</p> <p>7 device?</p> <p>8 A. I don't understand your question. What</p> <p>9 do you mean by "tracking"? So...</p> <p>10 Q. As a way of measuring.</p> <p>11 A. Would you repeat the question --</p> <p>12 Q. Yes.</p> <p>13 A. -- that way, please.</p> <p>14 Q. Other than the -- the situation you have</p> <p>15 just described, are you aware of any other instance</p> <p>16 in which someone has tracked advertising technology,</p> <p>17 transactions, auction events, in states and measured</p> <p>18 it by the number of internet subscriptions within a</p> <p>19 state?</p> <p>20 A. My answer is I'm aware of an expert who</p> <p>21 has done what I just testified to. I'm -- that --</p> <p>22 that is the extent of my knowledge on how other</p> <p>23 experts have approached maybe a similar issue that I</p> <p>24 was approaching here.</p> <p>25 Q. Okay. Just to clarify then, are you</p>	<p>1 measure the number of display ads that were bought</p> <p>2 and sold in a given state?</p> <p>3 MR. COLLIER: Objection; form.</p> <p>4 A. I -- I've -- I've worked on this case,</p> <p>5 I've reviewed a plethora of documents in this case,</p> <p>6 I've done a lot of my own research in this case.</p> <p>7 And based on the work that I've done in this case,</p> <p>8 I've concluded that utilizing the ratio between</p> <p>9 internet users in -- in individual states versus</p> <p>10 internet users in the United States is an</p> <p>11 appropriate, reliable, reasonable allocation</p> <p>12 methodology to allocate Google's financial</p> <p>13 information to the individual states in this case.</p> <p>14 Q. What -- what is the relationship between</p> <p>15 the number of subscribers, internet subscribers in</p> <p>16 Florida to the number of ad sellers or ad buyers in</p> <p>17 Florida?</p> <p>18 MR. COLLIER: Objection; form.</p> <p>19 A. Again, that -- that question, I think,</p> <p>20 conflates a couple issues here.</p> <p>21 The number of internet users in Florida,</p> <p>22 as it relates to the number of internet users in the</p> <p>23 United States is the metric to -- that's appropriate</p> <p>24 to calculate what portion of Google's overall U.S.</p> <p>25 financial results are allocable to Florida.</p>

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<p>1 Because U.S. earns its -- its overall</p> <p>2 U.S. financial results from internet commerce. And</p> <p>3 internet commerce occurs from internet users. And</p> <p>4 therefore it's the appropriate methodology. And I</p> <p>5 don't -- the -- the relationship between internet</p> <p>6 users and the -- I don't even -- advertising -- what</p> <p>7 did you...</p> <p>8 Q. Ad buyers and sellers?</p> <p>9 A. Ad buyers and sellers isn't the relevant</p> <p>10 ratio to consider because the users are what's</p> <p>11 creating the auctions, and the auctions are what is</p> <p>12 providing Google the -- the financial success.</p> <p>13 And so understanding what opportunities</p> <p>14 Google is getting financially from each state is --</p> <p>15 is -- under the -- we're thinking about allocating</p> <p>16 its financials to each state. Well, what</p> <p>17 opportunities are generated in each state is the --</p> <p>18 is the appropriate way to look at it. So that's</p> <p>19 what I've done.</p> <p>20 Q. Does the number of subscriptions,</p> <p>21 internet subscriptions in a state tell you how many</p> <p>22 ad auctions were conducted within that state in a</p> <p>23 given period of time?</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 A. I think the ratio between the number of</p>	<p>1 A. I don't understand. Would you repeat</p> <p>2 that, please?</p> <p>3 Q. In effect there is an auction that takes</p> <p>4 place between two nonplaintiff state citizens or</p> <p>5 residents. Do you have that in mind?</p> <p>6 A. There's an auction that takes place.</p> <p>7 Does that include all of the participants, i.e., the</p> <p>8 people who were participants in the auction that</p> <p>9 didn't win the auction?</p> <p>10 Because as I understand, auctions have a</p> <p>11 variety of participants, not just the winner and</p> <p>12 the -- not just the -- the -- the winning advertiser</p> <p>13 and the seller.</p> <p>14 Q. Well, let's take one that there is two</p> <p>15 participants, a New Hampshire seller and a -- and a</p> <p>16 Maine buyer, and Google is in California. Right?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. Google -- the -- the headquarters of</p> <p>19 Google?</p> <p>20 Q. Yes.</p> <p>21 A. I understand the headquarters of Google</p> <p>22 are in California.</p> <p>23 Q. Okay. And they -- they consummate a</p> <p>24 buy/sell or auction between those two buyers and --</p> <p>25 and sellers. Right?</p>
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<p>1 internet users in each state and the number of</p> <p>2 internet users in the United States gives a -- a</p> <p>3 relevant ratio between the -- the number of ad</p> <p>4 auctions that would be developed, because the users</p> <p>5 are -- are creating the ad auctions.</p> <p>6 Q. Have you done that analysis?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. I've done the analysis and determined the</p> <p>9 ratio between internet users in the United States</p> <p>10 and internet users in -- in the individual states.</p> <p>11 I've done that analysis. I understand, based on my</p> <p>12 work in this case, my education, training, and</p> <p>13 experience, that -- that the -- the auctions are</p> <p>14 generated by users going on to different websites.</p> <p>15 And so I think the ratio -- I would expect the ratio</p> <p>16 to be -- to be a reliable ratio for that purpose.</p> <p>17 Q. What about -- what if a -- what if an</p> <p>18 internet subscriber in Texas -- well, let's ask a</p> <p>19 different question.</p> <p>20 If there is a transaction between a</p> <p>21 resident company in New Hampshire as a seller, and a</p> <p>22 buyer in Maine, and Google is in California, do you</p> <p>23 count that transaction in your total transaction</p> <p>24 count?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p>1 MR. COLLIER: Objection; form.</p> <p>2 Q. Got that?</p> <p>3 A. I understand what you're saying thus far.</p> <p>4 Q. Okay. Did you count that auction in your</p> <p>5 violation total count?</p> <p>6 A. Are you -- are you talking -- is there a</p> <p>7 user that created the auction that's in one of</p> <p>8 the -- the states?</p> <p>9 Q. No. I'm just asking you now, the</p> <p>10 participants are out-of-state and Google is</p> <p>11 out-of-state. Did you -- did you count that in your</p> <p>12 total violations under the plaintiff states'</p> <p>13 statutes?</p> <p>14 A. I believe my allocation method would --</p> <p>15 would -- would be a sufficient basis where it would</p> <p>16 allocate approp- -- reasonably accurately to each</p> <p>17 state, reliably accurate to the appropriate states.</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED] And so based on that, it's fully appropriate</p>

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<p style="text-align: right;">Page 282</p> <p>1 to look at the internet users in states versus</p> <p>2 overall as an allocation methodology.</p> <p>3 And by using that allocation methodology,</p> <p>4 it should do a -- and I believe it is the</p> <p>5 appropriate methodology to -- to use to parse out</p> <p>6 ones that are affiliated auctions that would involve</p> <p>7 users from those states. So that is an appropriate</p> <p>8 methodology.</p> <p>9 Using that methodology, one would -- one</p> <p>10 would expect that that auction -- if it doesn't have</p> <p>11 a user or any participant in the United States -- in</p> <p>12 one of those states wouldn't be counted as part of</p> <p>13 the -- the allocation.</p> <p>14 But because that specific information is</p> <p>15 not available in each and every auction that was</p> <p>16 provided in Google's dataset, we have to use an</p> <p>17 allocation methodology.</p> <p>18 And so that methodology that I used is --</p> <p>19 is one that I think would appropriately separate the</p> <p>20 one -- the auction that you -- you've described from</p> <p>21 auctions that -- that occur with -- with a user</p> <p>22 party in one of the relevant states.</p> <p>23 And so while I can't specifically look at</p> <p>24 each auction and calculate that, and I have to use</p> <p>25 an allocation methodology, and by definition that's</p>	<p style="text-align: right;">Page 284</p> <p>1 Do you agree that a -- that ad buyers and</p> <p>2 sellers under the New Hampshire DTPA should not be</p> <p>3 able to come into court and recover for auctions</p> <p>4 that allegedly were burdened with misrepresentation</p> <p>5 or deception outside of their state?</p> <p>6 Do you follow what I'm asking?</p> <p>7 MR. COLLIER: Objection; form.</p> <p>8 A. Well, I -- I -- I understand that all of</p> <p>9 the auctions that I've looked at from the dataset</p> <p>10 have been burdened with deception. And, therefore,</p> <p>11 there's not a question of -- of whether the auctions</p> <p>12 have been burdened with -- with deception.</p> <p>13 Now -- and now it's just allocating the</p> <p>14 proportion of those auctions that would have -- that</p> <p>15 would relate to each individual state at issue here.</p> <p>16 And that's because the information to do that, on an</p> <p>17 auction-by-auction basis, isn't available to me. [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 I haven't received it. I have to use an</p> <p>22 allocation methodology and so the methodology I used</p> <p>23 is -- is appropriate. It is -- it is reliable. If</p> <p>24 there's another one that I'm asked to use, I'm happy</p> <p>25 to look at it and -- and use it. I don't know of</p>
<p style="text-align: right;">Page 283</p> <p>1 going to be an estimate. It's going to be a proxy.</p> <p>2 This is a reliable, useful, relevant proxy.</p> <p>3 Q. Why did you say that you recognize it</p> <p>4 would be appropriate to exclude any such</p> <p>5 transaction, that is, a transaction between</p> <p>6 noncitizen -- plaintiff citizens in this case from</p> <p>7 your analysis?</p> <p>8 MR. COLLIER: Objection -- objection;</p> <p>9 form.</p> <p>10 A. I'm trying to allocate the portion of</p> <p>11 auctions that Google is involved in that involved</p> <p>12 U.S. users. And so I look at the dataset of</p> <p>13 auctions that they've provided to us, and I'm trying</p> <p>14 to allocate the portion of those auctions that would</p> <p>15 be relevant to the 17 states, that would be --</p> <p>16 involved the 17 states.</p> <p>17 I have to find a methodology that -- that</p> <p>18 would work as a reasonable, reliable allocation</p> <p>19 method. And I believe that user base versus the</p> <p>20 overall internet user base -- the internet user base</p> <p>21 from each state, relative to the overall internet</p> <p>22 user base in the United States is the appropriate</p> <p>23 methodology.</p> <p>24 Q. Do you agree that -- that a</p> <p>25 Nevada -- strike that.</p>	<p style="text-align: right;">Page 285</p> <p>1 one that's more reliable or appropriate than I've --</p> <p>2 than this one. I don't believe that it would</p> <p>3 have -- using another methodology would -- would</p> <p>4 likely have a -- an impact on my overall conclusion.</p> <p>5 But I'm happy to do it if there's -- if there's an</p> <p>6 additional one.</p> <p>7 Q. Did -- do you understand that Google ever</p> <p>8 tracked, based upon internet subscriptions, the</p> <p>9 location or identity of the ad buyers and sellers</p> <p>10 that were participants in its auctions?</p> <p>11 MR. COLLIER: Objection; form.</p> <p>12 A. I think we've gone around on this a few</p> <p>13 times. My -- my understanding is that Google has</p> <p>14 not provided or maintained data that enables me to</p> <p>15 determine, of the auctions that they've listed,</p> <p>16 which ones involve users in -- in the 17 plaintiff</p> <p>17 states. So they haven't kept that data and I think</p> <p>18 that's responsive to the question you just asked</p> <p>19 and, therefore, I had to use an allocation</p> <p>20 methodology.</p> <p>21 Q. Are you suggesting, when you say they</p> <p>22 haven't kept it, that they had it at some point in</p> <p>23 time and did use that methodology that you've used</p> <p>24 to track ad buyers' and ad sellers' locations but</p> <p>25 now don't have that information anymore, or are you</p>

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1 saying they just did not keep or track things at any
 2 time to your knowledge in that fashion?
 3 MR. COLLIER: Objection; form.
 4 Go ahead.
 5 A. I don't have an opinion whether they had
 6 the information and didn't retain it or they didn't
 7 track the information, but I believe the information
 8 would be generally available through IP addresses
 9 and things of that nature to be able to track
 10 where -- where the participants are located. But
 11 whether they tracked it or didn't retain it, I
 12 don't -- I don't have any insight to that. I just
 13 know they didn't produce it in this case.
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 MR. COLLIER: Objection; form.
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

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1 [REDACTED]
 2 I've used and described my methodology
 3 for -- based on data available to me, the -- the
 4 advertisers and where they're located using the best
 5 data available to me. And I've described that
 6 methodology in my report.
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED] So the publishers, the
 12 advertisers, the users, there's not more granular
 13 information than the country. So to try to -- to
 14 try to figure out the state requires allocation
 15 methodology.
 16 MR. GIBBS: Objection; nonresponsive.
 17 Q. Did you undertake any alternative
 18 analysis to identify the state location or identity
 19 of ad sellers or buyers other than through your
 20 internet methodology?
 21 MR. COLLIER: Objection; form.
 22 A. Of course, I looked at the dataset. I
 23 looked to see if I could parse that information from
 24 the dataset. I analyzed the dataset to determine
 25 whether or not that data were -- those data were

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1 available in the dataset. They weren't. We -- and
 2 I made a -- a request saying I would like to see
 3 data by state if it -- if it's available. I was
 4 told it wasn't.
 5 So I've -- I've done analysis to try to
 6 determine if there's a better way. I've looked
 7 at -- I've asked for information, if it exists, to
 8 do it a different way. And given that there was no
 9 better information, it was up to me to -- to figure
 10 out a -- a allocation methodology that was
 11 appropriate. And based on my review of the
 12 documents, the record produced in this matter, my
 13 independent research, my training, education, and
 14 experience, I determined that this was the best
 15 method available to me.
 16 And as I said, if there's a better one,
 17 the jury thinks there's a better one or there's
 18 another one that I should consider, I'm happy to
 19 consider it. I know, for example, Dr. Wiggins
 20 suggests an alternative. I disagree with his
 21 alternative. I don't think it's appropriate. I
 22 explain why. But even using his methodology, we
 23 still get the violation counts that are so far out
 24 to -- that are so many, that we're going to end up
 25 in my -- whether we use his count or my count, in --

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1 in my -- in my penalty range.
 2 So I think this is appropriate. I think
 3 it's reasonable. I'm happy to consider other
 4 methods. I'd be -- be very surprised if the other
 5 methods would affect the violation counts such that
 6 we would not be -- that they would be low enough
 7 where we would not be in my penalty range.
 8 MR. GIBBS: Objection; nonresponsive.
 9 Q. On average, sir, do internet users in
 10 Texas and Nevada spend the same amount of time on
 11 the internet based upon your investigation?
 12 MR. COLLIER: Objection; form.
 13 A. I do not have information about the
 14 amount of time on the internet between individual
 15 users. I think the methodology that I have used
 16 accounts that users -- there's going to be people in
 17 Texas and people in Florida that use the internet a
 18 lot, that don't use the internet a lot. It's going
 19 to be related to the number of -- I think it's going
 20 to be proportional in general to the number of
 21 users. But I think the -- this is an appropriate
 22 apportionment that considers those factors that
 23 you're bringing up.
 24 Q. Did you do any -- did you make any
 25 investigation to see whether people in Texas or in

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<p style="text-align: right;">Page 290</p> <p>1 Nevada spend the same amount of time on average on 2 the internet, yes or no? 3 MR. COLLIER: Objection; form. 4 A. As I said, I've looked at lots of 5 information in this case, done independent research. 6 I've found no information that allowed -- that -- 7 that provide me information to do that type of 8 calculation. General understanding of -- of -- of 9 the user bases would be such that I think those 10 ratios would be similar -- 11 Q. But you haven't done -- 12 A. -- (unintelligible) appropriate methods. 13 Q. You -- I understand why you say you 14 didn't do it. My question simply was you didn't do 15 any -- any analysis that answered that question? 16 A. I did an analysis that looked into that 17 question, but that question, I believe, is -- is 18 answered by the ratio itself and I think that's a 19 reliable method. 20 Q. How about your analysis with respect to 21 state-by-state demographics? For example, did you 22 determine whether a particular state has younger or 23 more older -- more old subscribers and consider any 24 difference in their participation in auctions -- 25 A. What I've done is --</p>	<p style="text-align: right;">Page 292</p> <p>1 relationship between internet subscribers and 2 their -- and their financial results I think is 3 an -- an appropriate relationship. 4 Q. Was Google charging and making money off 5 of home internet subscriptions? 6 A. Google is charging and making money in a 7 variety of different ways. In general, it's through 8 internet commerce and when -- and in auctions, they 9 make money when auctions happen and auctions are a 10 result of internet users going onto websites in 11 which a publisher has space for an ad. And, 12 therefore, internet users would be creating the 13 auctions and, therefore, the ratio of internet users 14 in the states versus the United States is a 15 reasonable, rational, reliable ratio to use for 16 allocating Google's profits. 17 Q. Was -- how much was Google charging 18 for -- and how much revenue did it generate for home 19 internet subscriptions? 20 MR. COLLIER: Objection; form. 21 A. I -- I believe I'm going to give the same 22 question. Google is an internet commerce company 23 and makes its money off of internet commerce. 24 And -- and, therefore, internet users are creating 25 the opportunities for Google to make money and,</p>
<p style="text-align: right;">Page 291</p> <p>1 Q. -- or display ads? 2 A. What I've done is determine the internet 3 user base numbers in those states versus -- in each 4 individual state that's at issue here versus the 5 entire United States. 6 I believe the ratios are -- are -- are 7 reliable, reasonable ratios to use, and -- and as 8 such, that's what I've used as a basis for internet 9 commerce. If there's -- if someone presents another 10 alternative that they think I should think about, 11 I'm happy to -- to look at it. 12 Q. Okay. If somebody else came up with 13 that, you'd look at it. Right? 14 A. If there's -- if someone suggests there's 15 a better method, I would like to see it. I 16 believe -- I believe my method is the correct one. 17 I'm not aware of a better one, but I'm happy to 18 consider one if there's a better one. 19 Q. What is the relationship, sir, between 20 Google's display advertising revenue and profits and 21 home internet subscriptions? 22 MR. COLLIER: Objection; form. 23 A. Google, is, as I've said a number of 24 times, is a internet commerce company and makes its 25 money off of internet commerce and, therefore, the</p>	<p style="text-align: right;">Page 293</p> <p>1 therefore, internet users is the appropriate kind of 2 allocation method to allocate to the states. So 3 Google makes its money off of those users and -- 4 and -- because of the activity of those users and, 5 therefore, the -- the ratio of users in those 6 states, the United States is an appropriate ratio. 7 Q. In the AdTech industry, how much money -- 8 or as a percentage of their revenues or profit, how 9 much money does Google make charging, if they do, 10 for home internet subscriptions under your 11 investigation? 12 A. Google makes the vast majority of its 13 money and -- and I think virtually all of its 14 profits ultimately as a result of selling ads. They 15 sell ads to the people who use the internet. Or 16 they sell ads as a result of people using the 17 internet. And, therefore, Google makes its money as 18 a result of the people who use the internet and, 19 therefore, I'm trying to allocate the money it makes 20 in individual states. It is reasonable, rational, 21 reliable to use the number of internet users in 22 those states compared to the United States as a 23 ratio for allocating their -- their financial 24 results. 25 Q. If you totaled the number of internet</p>

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<p style="text-align: right;">Page 294</p> <p>1 users in the state, can you determine from that the</p> <p>2 number of DTPA violations that occurred in that</p> <p>3 state?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. Well, I think, as I've mentioned, I've</p> <p>6 looked at the number of -- of auctions that involve</p> <p>7 U.S. users. That's the dataset that Google</p> <p>8 provided. I understand that all the open auctions</p> <p>9 that resulted in matched queries from that dataset</p> <p>10 are -- are -- are deceptive based on the misconduct</p> <p>11 at issue in this case and I've utilized an</p> <p>12 appropriate allocation methodology to determine</p> <p>13 which of those -- how many of those violations</p> <p>14 occurred in the various states. So -- so that's</p> <p>15 what I've done and I think it's appropriate.</p> <p>16 Q. I wanted look at your, paragraph the</p> <p>17 original opening paragraph, at 110. Do you have</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. You state there as your header on that</p> <p>21 portion of your opinion that: Google derives direct</p> <p>22 and indirect benefits from the alleged misconduct.</p> <p>23 Right, sir?</p> <p>24 A. That is correct.</p> <p>25 Q. That's a declare -- one of those</p>	<p style="text-align: right;">Page 296</p> <p>1 historical and direct benefits that Google has made</p> <p>2 from this conduct.</p> <p>3 But that's just one -- one small area of</p> <p>4 the overall benefits. And, again, you have to</p> <p>5 remember that this conduct creates a snowball effect</p> <p>6 for Google in that it feeds upon itself and</p> <p>7 creates -- creates advantages and enhanced position</p> <p>8 in Google in the marketplace for -- for AdTech, and</p> <p>9 it also creates future benefits for Google in the</p> <p>10 market for AdTech. That is an important component</p> <p>11 to Google's overall success. So this has had</p> <p>12 benefits to Google throughout its organization.</p> <p>13 During the time that this has occurred Google has</p> <p>14 become the fourth largest company in the -- in the</p> <p>15 world by market capitalization. And they're going</p> <p>16 to make money as a result of this and derive</p> <p>17 benefits as a result of this conduct for the rest of</p> <p>18 its existence.</p> <p>19 MR. GIBBS: Objection; nonresponsive.</p> <p>20 Q. Let's look at Paragraph 110. You say:</p> <p>21 Google directly benefits from its misconduct. Every</p> <p>22 time an auction clears on AdX that would not have</p> <p>23 cleared but for the misconduct.</p> <p>24 Do you see that?</p> <p>25 MR. COLLIER: Objection; form.</p>
<p style="text-align: right;">Page 295</p> <p>1 declarative statements by you. Right, sir?</p> <p>2 MR. COLLIER: Objection; form.</p> <p>3 A. It is a -- a header that provides the</p> <p>4 reader a road map as to which to follow. And so</p> <p>5 that is a conclusion and the -- and the basis and</p> <p>6 information that supports that conclusion follows</p> <p>7 that header from Paragraphs 110 through</p> <p>8 Paragraphs 115.</p> <p>9 Q. Now, you did have some documentation</p> <p>10 produced by Google indicating what its expectations</p> <p>11 were in terms of profit, lift or increases, expected</p> <p>12 or hoped for from various of these mechanics. Did</p> <p>13 you not?</p> <p>14 A. There was various Google documents that</p> <p>15 indicated a calculation of different, what I would</p> <p>16 call, direct benefits that Google was trying to</p> <p>17 calculate. I think there is deposition testimony</p> <p>18 that I reference that -- that put that into context</p> <p>19 as well by one of the Google software engineers.</p> <p>20 I'm trying to recall his name. I can look at my</p> <p>21 attachment too. One second. It's in my other</p> <p>22 report. That generally says that that information</p> <p>23 is not going to provide me the information that</p> <p>24 I'm -- that I was looking for. It's not going to</p> <p>25 provide me even the -- the -- the amount of</p>	<p style="text-align: right;">Page 297</p> <p>1 A. Yeah. I said Google directly benefits</p> <p>2 from its misconduct every time an option clears on</p> <p>3 AdX that would not have cleared but for the</p> <p>4 misconduct.</p> <p>5 Q. Comma.</p> <p>6 A. Or if the clearing price would have been</p> <p>7 absent the misconduct.</p> <p>8 Q. Right. And you footnote that. Right?</p> <p>9 A. Yes.</p> <p>10 Q. So you footnote that direct benefit that</p> <p>11 you are characterizing that Google obtained from the</p> <p>12 misconduct. Right?</p> <p>13 A. I -- I can read the footnote. It says:</p> <p>14 There are documents in the record that provide</p> <p>15 estimates of the direct monetary impact related to</p> <p>16 Google's misconduct. When asked to provide Google's</p> <p>17 revenue and profits attributable to such -- to such</p> <p>18 Google auction mechanic, Google has stated that they</p> <p>19 would need to attempt to create this data through a</p> <p>20 manual process.</p> <p>21 And I say: See the declaration of</p> <p>22 [REDACTED] in support of defendant Google</p> <p>23 LLC's responses to plaintiffs' third set of</p> <p>24 interrogatories May 24th, 2024. Google has not</p> <p>25 undertaken this process. Thus, I find these limited</p>

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<p style="text-align: right;">Page 298</p> <p>1 documents unreliable and insufficient to support an 2 analysis of the direct benefits of the misconduct to 3 Google. Further, as I described herein, Google's 4 benefit from the misconduct is not limited to the 5 direct monetary benefit of each misconduct. 6 MR. GIBBS: Objection; nonresponsive. 7 Q. Dropping down in that same footnote, you 8 see the bottom paragraph beginning "Prelaunch 9 Estimates of DRS"? 10 A. Yes. 11 Q. And DRS, of course, is one of the 12 mechanics that the plaintiffs are complaining about 13 here. Right? 14 A. Yes. 15 Q. And indeed, you cite here to documents, 16 internal real-time documents, at Google which made 17 estimates before they launched it of the order of 18 magnitude of the impact that they hoped to achieve 19 from that particular product or mechanic. Right? 20 A. If I recall there was different 21 estimates. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p style="text-align: right;">Page 300</p> <p>1 Google has earned from this misconduct. 2 MR. GIBBS: Objection; nonresponsive. 3 Q. Continuing on at the end of that 4 footnote, you -- you note there that: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 10 Q. Yes, sir. 11 A. And I said the document in which that was 12 projected. 13 Q. So the internal projection real-time 14 document which you indicate is unreliable, [REDACTED] [REDACTED] 17 A. Well, if I can address what you just 18 said. I said it's unreliable for the quantification 19 of the actual benefit to Google from this 20 misconduct. And it's not that I'm saying it's 21 unreliable, Google's -- I am saying that. [REDACTED] [REDACTED] [REDACTED] [REDACTED] t I was trying to 25 accomplish which was an incremental benefit analysis</p>
<p style="text-align: right;">Page 299</p> <p>1 [REDACTED] 2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] And so there's a variety of different 6 estimates and -- and a variety of different 7 documents. None of which consider or try to 8 quantify the -- the impact -- the snowball impact 9 that I've been describing throughout today and the 10 benefits that Google is going to derive as a result 11 of that or the future benefits or -- or even 12 according to their own testimony, can accurately 13 quantify the -- the -- the actual benefits. 14 So when I was attempting to quantify 15 the -- the incremental benefits to Google from this 16 action, I looked to the record. These documents 17 were not sufficient to do that. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] And -- and as a -- as such that 22 type of analysis isn't -- not able to do it. Those 23 documents do not serve as a reliable estimate of -- 24 of the benefits that Google has -- has earned from 25 this misconduct or even the direct benefits that</p>	<p style="text-align: right;">Page 301</p> <p>1 from the misconduct. This is not an incremental 2 benefit analysis. 3 Q. No, sir, what it is, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 8 MR. COLLIER: Objection. 9 [REDACTED] 10 A. And that -- 11 MR. COLLIER: Sorry. Give me just a 12 moment. I apologize. I thought you were done. 13 Objection; form. 14 Go ahead Mr. Andrien. 15 A. That doc -- those -- [REDACTED] [REDACTED] [REDACTED] are not taking into 18 account, as I said, the overall benefit, the 19 snowball effect, the future benefit. This is -- 20 this is a -- a -- is a very limited analysis and -- 21 and that limitations are supported by other 22 testimony in the record. And so this cannot be used 23 reliably to do the incremental analysis to analyze 24 the benefit from this conduct to Google throughout 25 its operation. It just doesn't -- it -- it can't be</p>

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1 used for that purpose.

2 MR. GIBBS: Objection; nonresponsive.

3 Q. Certainly you have declared it unreliable

4 and chose not to use it in determining the direct

5 benefit or incremental benefit. True?

6 MR. COLLIER: Objection; form.

7 A. I have reached that conclusion. But I've

8 also reached that based on the -- the testimony of

9 Google personnel who have said the same thing.

10 Q. Well, they said that you couldn't --

11 strike that.

12 If you're just looking at the expected

13 direct benefit, [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] Right?

17 A. This document was a very limited

18 review -- it was a limited estimate of the benefits

19 to Google -- that -- and is not enough to determine

20 the incremental benefits, period. It's not just me

21 saying that. It's Google's people saying that. It

22 is insufficient. It doesn't take into account how

23 the interactions between these conducts play. How

24 these conducts create an advantage in the

25 marketplace for Google. How that advantage in the

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1 marketplace is going to have some snowball effects

2 throughout the AdTech stack in the rest of Google's

3 operations. It doesn't account for how important

4 this part of the technology was to Google, the rest

5 of Google's business. It doesn't account for future

6 benefits to Google.

7 So all the future benefits beyond as a

8 result of all these snowball effects, it is a very

9 limited document. It is not sufficient to do any

10 sort of incremental analysis of the benefits to

11 Google from this misconduct. And Google's people

12 confirm that conclusion. It's not just me saying

13 it.

14 MR. GIBBS: Objection; nonresponsive.

15 Q. At the time those documents were

16 generated internally, they didn't know whether any

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] True?

20 MR. COLLIER: Objection; form.

21 A. I'd -- I'd have to go back and look at

22 the documents to see what Google knew at the time.

23 But what they've known and what happened as a result

24 of the -- what they projected or knew or -- or

25 expected is different than what I've been tasked

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1 to -- to determine. I've been tasked to determine

2 the incremental benefits to Google from the

3 misconduct. And that estimate is not sufficient for

4 me to calculate the incremental benefit to Google.

5 And the information required to do that calculation

6 was not available to me because Google didn't either

7 retain or keep or track the necessary information

8 for me to do that. And therefore I could not do

9 that.

10 Q. Who --

11 THE WITNESS: If it's okay, I just

12 have to take a quick bio break. Just a second.

13 MR. GIBBS: Sure.

14 THE VIDEOGRAPHER: Going off the

15 record. The time is 5:50. 0

16 (Break.)

17 THE VIDEOGRAPHER: Back on the

18 record. The time is 6:02.

19 Q. Mr. Andrien, I want to talk now about

20 your third factor in your lens we've been discussing

21 here in calculating your penalties, and that's

22 previous violations. Okay?

23 That is one of the three that you have

24 listed in your report, is it not?

25 A. That is -- that is one of the factors

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1 that I've been asked to consider.

2 Q. And you included there what you

3 characterize as a number of fines and settlements

4 related to various alleged misconduct by Google.

5 Right?

6 A. That is correct.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q. Did you personally review the site -- the

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<p style="text-align: right;">Page 306</p> <p>1 circumstances, allegations, and/or terms of the 2 resolution of each of those cases before you relied 3 upon them? 4 MR. COLLIER: Objection; form. 5 A. I've considered the fines. I -- I looked 6 to see what they were related to, and the amounts, 7 and the settlement. There are certain -- I have 8 certain understandings about some of those, so I -- 9 I have looked at the information that was -- that 10 I -- that I've outlined in my -- in my -- in my 11 attachment here that -- it's the information I 12 relied upon, and that'll -- that'll show you the 13 information that I've relied upon -- 14 Q. Did you -- 15 A. -- related to this issue. 16 Q. -- did you rely upon any fines, 17 penalties, settlements from the European Union and 18 Google's business transactions there? 19 A. There was certain of those antitrust 20 violations that related to claims brought from -- 21 from -- that were brought outside of the United 22 States. 23 Q. Did you -- are you an expert in the due 24 process and/or processes and procedures of 25 governments' litigation outside the United States?</p>	<p style="text-align: right;">Page 308</p> <p>1 you will, based upon that, do you? 2 A. I -- I don't market myself as a lawyer, 3 if that's what you're asking. I market myself as a 4 financial economist who has experience in the legal 5 environment, both inside and outside of the United 6 States. 7 Q. Do you -- did you take into account 8 any -- any legal action against Google by Russia in 9 your evaluations? 10 [REDACTED] 11 [REDACTED]. I think there's 12 one that was -- if I recall -- I don't have it in 13 front of me as I sit here -- was \$7.8 million 14 associated with Russia. 15 Q. You don't know what -- have you made any 16 study of the due process protections and/or legal 17 process, fairness of litigation against American 18 companies, for example, in Russia? Has that been 19 part of your experience? 20 A. Well, I am familiar with different 21 international arbitrations and litigations that have 22 happened in Russia. So I have some familiarity with 23 that, but -- I guess I'll just leave it there. 24 Q. Yeah. Do you think that it is an 25 appropriate -- it is an appropriate measure of your</p>
<p style="text-align: right;">Page 307</p> <p>1 A. I have worked on a number of cases 2 involving litigations outside the United States 3 during my career. I would imagine I have more 4 experience than the average juror with litigations 5 that have occurred outside of the United States, but 6 other -- I think the question of whether one is an 7 expert or not is a legal determination. That would 8 be up to a judge to determine. 9 Q. Well, you don't hold yourself out as an 10 expert in the processes of litigation, for example, 11 conducted by the European Union in its litigation 12 against foreign nationals, are you? 13 A. I would just say the same thing. I have 14 experience in litigation that has happened outside 15 the United States. I have probably more 16 understanding and experience than the average juror. 17 And whether or not that -- that is -- whether or not 18 I'm an expert in that area is -- is up to a judge to 19 determine, not me. 20 That has a legal -- I think that's a 21 legal determination. So I hold myself up as a 22 person who has knowledge, skill, experience in -- in 23 various different categories. 24 Q. You don't hold yourself out as having 25 legal expertise in that -- and market yourself, if</p>	<p style="text-align: right;">Page 309</p> <p>1 deterrence analysis to -- to take into account 2 judgments taken by Russia against a company like 3 Google? 4 A. I think it can be. As an economist I'm 5 going to want to look at all the data I can, and 6 available to me, and interpret that data, and -- and 7 determine its relevance to my analysis. 8 So I've looked at the data. I think 9 I've -- I've analyzed the data in aggregate. And -- 10 and as I've said, I've looked at various -- I've 11 broken it down, and I've, in general, come to some 12 general conclusions based on the -- on the data that 13 I've reviewed, and -- and so that's the -- that's 14 the work that I've undertaken. 15 Q. Are you aware that in the last couple of 16 days that Russia has taken a judgment against Google 17 for decimillions of dollars, that is a number and 35 18 zeros behind it? Are you aware of that as you sit 19 here? 20 A. I have heard about that. I have not -- 21 other than hearing about it, I have not studied it 22 or anything like that. It's not part of my 23 analysis, and so it bears no relevance to what I've 24 done in this case. 25 Q. It's laughable, in your opinion, but</p>

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<p>1 understandable that the Russians would take some</p> <p>2 kind of legal action against an American company</p> <p>3 like that, isn't it?</p> <p>4 MR. COLLIER: Objection; form.</p> <p>5 A. I don't have an opinion on whether it's</p> <p>6 understandable or not. I do believe that a</p> <p>7 penalty -- or -- or that large is -- I believe it's</p> <p>8 larger than the wealth of the entire world.</p> <p>9 So in that sense, it doesn't make any</p> <p>10 economic sense to me.</p> <p>11 Q. [REDACTED]</p> <p>12 [REDACTED]?</p> <p>13 MR. COLLIER: Objection; form.</p> <p>14 A. [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 Q. The -- the EU took a major judgment</p> <p>24 against Google back in 2019. Right?</p> <p>25 MR. COLLIER: Objection; form.</p>	<p>1 cases are either brought by or taken by somebody</p> <p>2 like the Russian government or on the other hand are</p> <p>3 later reversed, as in the case of the EU?</p> <p>4 MR. COLLIER: Object.</p> <p>5 Q. Were those taken into consideration by</p> <p>6 you?</p> <p>7 A. I think whether or not the reverse would</p> <p>8 not have any bearing or -- or -- or -- or weighting</p> <p>9 to -- to my opinion in this case. Because my</p> <p>10 opinion looks at these and says, all right, I</p> <p>11 understand that Google has entered into fines and</p> <p>12 settlements for various conduct, much of which</p> <p>13 relates to this case.</p> <p>14 And whether it's been reversed or not,</p> <p>15 those amounts that were levied against it have not</p> <p>16 caused Google to sufficiently alter its behavior to</p> <p>17 avoid the -- the allegations and conducts that --</p> <p>18 that the -- that the plaintiffs in this case are --</p> <p>19 are -- alleged that are ongoing still.</p> <p>20 Q. We've established that your sole task and</p> <p>21 your sole opinions are confined in this case to the</p> <p>22 quantum or amount of civil penalties that you are</p> <p>23 recommending under the DTPA statutes. True?</p> <p>24 MR. COLLIER: Objection; form.</p> <p>25 A. I've analyzed and been asked to</p>
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<p>1 A. You'd have to refresh my recollection on</p> <p>2 dates and the judgment amounts, as I sit here.</p> <p>3 Q. Hundreds of millions of dollars. Do you</p> <p>4 recall that?</p> <p>5 A. I recall looking at a variety of</p> <p>6 different judgments and settlements that Google</p> <p>7 entered into from 2011 to -- through 2023. And I</p> <p>8 recall a number of them being related to the</p> <p>9 European Union, but I'd have to go back and look</p> <p>10 individually again and have my recollection</p> <p>11 refreshed as to the date and the exact amount.</p> <p>12 I've thought about these more in -- in</p> <p>13 categories of the type of violation and the total</p> <p>14 amounts, not the individual amounts.</p> <p>15 Q. Were you aware that the 2019 judgment,</p> <p>16 for example, against Google has been reversed and</p> <p>17 that fine has been eliminated?</p> <p>18 A. You'd have to show me and refresh my</p> <p>19 recollection so I could -- I could look. And I</p> <p>20 would have to go back and review it based -- in</p> <p>21 relation to the [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 Q. So my question is did you take into</p> <p>24 account, in your review and use of these past</p> <p>25 violations, that indeed a number of these kinds of</p>	<p>1 consider -- my assignment in this case was to</p> <p>2 determine appropriate penalties that should be</p> <p>3 applied -- levied against Google, to punish Google</p> <p>4 for the alleged misconduct in this case, and -- and</p> <p>5 consider that penalty in relation to three</p> <p>6 additional factors, which -- the three factors that</p> <p>7 I've addressed in this report. And that's the work</p> <p>8 that I've undertaken.</p> <p>9 Now, the opinions that I've offered are</p> <p>10 those opinions -- I've provided the support for</p> <p>11 those opinions. I am -- I am expecting to testify</p> <p>12 to those opinions, without -- without exception.</p> <p>13 And to the extent that those opinions enter into the</p> <p>14 category that you just described, that I'm going to</p> <p>15 them as such. To the extent they don't, then I'm</p> <p>16 going to testify to them as such still.</p> <p>17 Q. What type --</p> <p>18 MR. GIBBS: Objection; nonresponsive.</p> <p>19 Q. -- what type of violations, in your</p> <p>20 opinion, and as you have calculated your penalties</p> <p>21 here, are you recommending be considered as</p> <p>22 supportive of your opinions?</p> <p>23 And by that I mean what kinds of legal</p> <p>24 violations are fair game?</p> <p>25 MR. COLLIER: Objection; form.</p>

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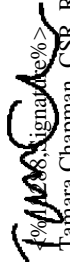
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<p>1 A. That's -- I don't understand the</p> <p>2 question.</p> <p>3 Q. I'll repeat --</p> <p>4 A. It's a broad question.</p> <p>5 Q. -- I'll rephrase the question.</p> <p>6 A. Thank you.</p> <p>7 Q. If -- if somebody at Google violated</p> <p>8 ERISA over at Google and didn't pay the employees,</p> <p>9 or was accused of not paying the employees, or there</p> <p>10 was some claim against management for not paying the</p> <p>11 employees under the ERISA statutes for, say,</p> <p>12 interest on pensions, is that fair game under the</p> <p>13 DTPA analysis of their -- of the penalties provision</p> <p>14 of the DTPAs?</p> <p>15 Is that includable, in your view, in</p> <p>16 assessing penalties?</p> <p>17 MR. COLLIER: Objection; form.</p> <p>18 A. I -- I don't know what you mean by "fair</p> <p>19 game."</p> <p>20 Q. Includable.</p> <p>21 A. If I may -- as an economist, if I'm</p> <p>22 looking at past violations, I would want to look at</p> <p>23 all of the past violations that exist that I can</p> <p>24 find. I'd want to understand them. I'd want to</p> <p>25 understand if ultimately the -- the -- the</p>	<p>1 Q. Is any of the testimony today intended to</p> <p>2 somehow limit the opinions expressed in your opening</p> <p>3 report?</p> <p>4 A. No, sir.</p> <p>5 Q. Was any of your testimony intended to</p> <p>6 change the opinions expressed in your rebuttal</p> <p>7 report?</p> <p>8 A. No, sir.</p> <p>9 Q. Is any of the testimony you gave today</p> <p>10 intended to limit the opinions expressed in your</p> <p>11 rebuttal report?</p> <p>12 A. No, sir.</p> <p>13 Q. After sitting through all of these</p> <p>14 questions and exhibits presented by Google's</p> <p>15 counsel, do you have an opinion on whether or not</p> <p>16 you have sufficient facts and data to reach the</p> <p>17 opinions you've reached within the two reports in</p> <p>18 this case?</p> <p>19 A. Yes, I do have sufficient facts and data</p> <p>20 to reach the opinions that I've reached in this</p> <p>21 case.</p> <p>22 MR. COLLIER: Pass the witness.</p> <p>23 MR. GIBBS: We need to designate the</p> <p>24 transcript as confidential.</p> <p>25 MR. COLLIER: So -- so -- so noted.</p>
Page 315	Page 317
<p>1 violations have resulted in Google -- effectively</p> <p>2 deterring Google's bad conduct. In this case,</p> <p>3 Google has continued to engage in misconduct,</p> <p>4 continues to engage in now. [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED] And as I</p> <p>9 understand it, the deceptive misconduct in this case</p> <p>10 has risen -- has -- has -- has put Google in the</p> <p>11 position where it's also facing anticompetitive</p> <p>12 conduct. So those are related in that way.</p> <p>13 MR. GIBBS: I'll pass the witness.</p> <p>14 EXAMINATION</p> <p>15 BY MR. COLLIER:</p> <p>16 Q. Mr. Andrien, is it fair to say Google's</p> <p>17 counsel has asked you approximately seven hours'</p> <p>18 worth of questions regarding your opinions in your</p> <p>19 June 7th opening report and your September 9th</p> <p>20 rebuttal report?</p> <p>21 A. Yes, that's fair.</p> <p>22 Q. Well, is any of the testimony you've</p> <p>23 given today intended to change the opinions you've</p> <p>24 expressed in your opening report?</p> <p>25 A. No, sir.</p>	<p>1 Thank you, sir.</p> <p>2 MR. GIBBS: And let the record</p> <p>3 reflect I have left you -- given back five minutes.</p> <p>4 MR. COLLIER: Let the record reflect</p> <p>5 we gave out cookies.</p> <p>6 MR. GIBBS: Fair trade.</p> <p>7 MR. COLLIER: All right.</p> <p>8 THE VIDEOGRAPHER: This ends the</p> <p>9 deposition of Jeffrey Andrien. Going off the</p> <p>10 record. The time is 6:20.</p> <p>11 (Deposition concluded at 6:20 p.m.)</p> <p>12 MR. COLLIER: Read and sign.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Page 318		Page 320
1	CORRECTION PAGE	1 IN THE UNITED STATES DISTRICT COURT
2	WITNESS NAME: JEFFREY SCOTT ANDRIEN	2 FOR THE EASTERN DISTRICT OF TEXAS
3	DATE: 11/01/2024	3 SHERMAN DIVISION
4	PAGE LINE CHANGE REASON	4 THE STATE OF TEXAS, ET §
5		5 AL., § CIVIL ACTION NO.
6		6 PLAINTIFFS, § 4:20-CV-00957-SDJ
7		7 V. §
8		8 GOOGLE LLC, §
9		9 DEFENDANT. §
10		10 REPORTER'S CERTIFICATION
11		11 DEPOSITION OF JEFFREY SCOTT ANDRIEN
12		12 TAKEN NOVEMBER 1, 2024
13		13 I, TAMARA CHAPMAN, Certified Shorthand Reporter in
14		14 and for the State of Texas, hereby certify to the
15		15 following:
16		16 That the witness, JEFFREY SCOTT ANDRIEN, was duly
17		17 sworn by the officer and that the transcript of the
18		18 oral deposition is a true record of the testimony
19		19 given by the witness;
20		20 That the original deposition was delivered to
21		21 ROBIN C. GIBBS;
22		22 That a copy of this certificate was served on all
23		23 parties and/or the witness shown herein on
24		24 I further certify that pursuant to FRCP No.
25	Job No. CS6918698	25 30(f)(i) that the signature of the deponent:

Page 319		Page 321
1	SIGNATURE PAGE	1 X was requested by the deponent or a party
2		2 before the completion of the deposition and that the
3	I, JEFFREY SCOTT ANDRIEN, have read the foregoing	3 signature is to be returned within 30 days from date
4	deposition and hereby affix my signature that same	4 of receipt of the transcript. If returned, the
5	is true and correct, except as noted on the	5 attached Changes and Signature Page contains any
6	correction page.	6 changes and the reasons therefor;
7		7 was not requested by the deponent or a party
8		8 before the completion of the deposition.
9		9 I further certify that I am neither counsel for,
10		10 related to, nor employed by any of the parties in
11		11 the action in which this proceeding was taken, and
12		12 further that I am not financially or otherwise
13		13 interested in the outcome of the action.
14		14 Certified to by me this 4th day of November, 2024.
15		15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23		23
24		24
25		25

 %%%Signature%%>
Tamara Chapman, CSR, RPR-CRR
CSR NO. 7248; Expiration Date: 12-31-24
Veritext Legal Solutions
Firm Registration No. 571
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
800-336-4000

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1 Marc B. Collier
2 marc.collier@nortonrosefulbright.com
3 November 5, 2024
4 RE: State Of Texas Et Al v. Google LLC
5 11/1/2024, Jeffrey Scott Andrien (#6918698)
6 The above-referenced transcript is available for
7 review.
8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.
12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com.
16 Return completed errata within 30 days from
17 receipt of testimony.
18 If the witness fails to do so within the time
19 allotted, the transcript may be used as if signed.
20
21
22 Yours,
23 Veritext Legal Solutions
24
25

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973-410-4098

ERRATA SHEET FOR THE TRANSCRIPT OF JEFFREY ANDRIENCase Name: *The State of Texas, et. al. v. Google LLC*, 4:20-cv-00957-SDJ

Date of Deposition: November 1, 2024

Deponent: Jeffrey Andrien

Page	Line	Original Language	Corrections	Reason for Correction
9	8	"the opinions in this report"	"the opinions in these reports"	Correction
26	4-6	"But they don't relate to the antitrust, then -- then the -- those are still the opinions I'm going to give."	"But if my opinions don't relate to antitrust, they are still the ones I am going to give and testify to."	Clarity
29	6	"opinions without accept - - acceptance"	"opinions without exception"	Transcription Error
30	5-6	"that Facebook is - - would be part of the AdTech stack at issue here."	"that Facebook would be involved in auctions at issue here."	Correction
35	20	"my report"	"my reports"	Correction
36	25	"in my report"	"in my reports"	Correction
38	7	"my report"	"my reports"	Correction
38	9	"of the report"	"of the reports"	Correction
39	22	"my opinions based"	"my opinions are based"	Correction
52	21	"And the things that I do"	"And of the things that I do"	Correction
56	15	"academic journals have"	"academic journals that have"	Correction
56	17	"publication"	"publications"	Transcription Error
63	10-11	"So because they claimed it"	"So just because they claimed it"	Correction
65	12	"Dr. Ruden"	"Dr. Rudin"	Transcription Error
65	14	"Ruden"	"Rudin"	Transcription Error
70	21	"there is four"	"there are four"	Correction
80	1	"are working in the snowball"	"are working and the snowball"	Transcription Error

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Page	Line	Original Language	Corrections	Reason for Correction
89	21	“damages”	“penalties”	Correction
95	7	“statute allows”	“statutes allow”	Correction
116	7-8	“issuing of my original report”	“issuing of my rebuttal report”	Correction
157	24	“effective”	“affected”	Transcription Error
159	18	“I have asked to assume”	“I have been asked to assume”	Correction
176	9	“increasing”	“Decreasing”	Correction
189	7	“I related to”	“that relate to”	Correction
189	12-13	“I looked -- I analyzed those into the -- by looking at kind of a portion of those to the 17 point of states.”	“I analyzed those and apportioned them to the 17 states.”	Correction
212	25	“produced”	“produce”	Correction
248	19	“DBAA”	“DVAA”	Transcription Error
292	22	“question”	“answer”	Correction
297	2	“option”	“auction”	Transcription Error
297	6-7	“Or if the clearing price would have been absent the misconduct.”	“Or if the clearing price was higher than it would have been absent the misconduct.”	Transcription Error
300	9	“In a”	“And a”	Transcription Error
308	10	“funds”	“fines”	Transcription Error
310	18	“violation accounts”	“violation counts”	Transcription Error

I have inspected and read my deposition and have listed all changes and corrections above, along with my reasons therefore.

Signature:

A handwritten signature in blue ink, appearing to read "Jeffrey Andrew".

Date: November 13, 2024